

STATE OF MAINE
SUPREME JUDICIAL COURT
SITTING AS THE LAW COURT

LAW COURT DOCKET NO. Cum-23-83

WAYNE R. JORTNER et al.
Petitioner-Appellee,

v.

SECRETARY OF STATE
Respondent-Appellant.

On Appeal from the Superior Court
Cumberland County

APPENDIX

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APPENDIX

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Date filed: 02/09/23

CUMBERLAND
COUNTY

Justice MaryGay Kennedy

Docket No. AP-23-007

Action: Rule 80C Appeal

Wayne R Jortner
Richard Bennett
John Clark
Nicole Grohoski

Shenna Bellows in her official
capacity as Secretary of State
of the State of Maine

Vs.

Petitioner/Plaintiff's' Attorney

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Date of Entry
2023

Feb 16	Received 02/09/23. Petitioners' Rule 80C Appeal filed. Filing fee paid.
Feb 16	Received 02/09/23. Petitioners' Consented-To Motion to Expedite Filing of Administrative Record and Briefing Schedule along with proposed order filed.
Feb 16	Received 02/13/23. Entry of Appearance of John R Bolton AAG on behalf of Respondent Shenna Bellows in her official capacity as Secretary of State of the State of Maine filed.
Feb 16	Received 02/15/23. Administrative Record along with signed original certification of agency record Filed.
Feb 16	On 02/16/23. Case sent to assigned Justice John O'Neil for review of pending motion.

Feb. 25 Received 2/21/23.
Petitioners' Rule 80C brief filed.

" " On 2/22/23
File returned.

" " Received 2/22/23.
Order on Consented-to Motion to Expedite Filing of Administrative Record filed.
(J. O'Neil - signed 2/22/23)
The Clerk shall incorporate this Order into the docket pursuant to Maine Rules
Of Civil Procedure 79(a).
Copies to counsel/parties 2/25/23.

" " On 2/22/23.
Justice O'Neil recuses.

" " On 2/25/23.
Case reassigned to Justice MaryGay Kennedy.

Mar 1 On 3/1/23.
Respondent Secretary of State's Rule 80C Brief filed.

Mar 6 On 3/6/23.
Petitioner's Rule 80C Reply Brief filed.

Mar 6 On 3/6/23.
Case file and record sent to Justice Kennedy for review.

Mar 9 On 3/9/23.
Case file returned to Clerk's Office.

Mar 9 On 3/9/23.
Decision signed by Justice MaryGay Kennedy. Petitioners' Appeal is GRANTED.
This matter is remanded to the Secretary of State for the purpose of revising the
final wording of the ballot question in a manner consistent with this decision.
Copies to parties/counsel 3/9/23.

Mar 13 On 3/13/23.
Respondent Shenna Bellows' Notice of Appeal filed. Date-stamped copy sent to
Petitioner on 3/13/23.

Mar 13 On 3/13/23.
Notice of Appeal transmitted to the Law Court with Appeal Checklist and copy of
docket record.

STATE OF MAINE
CUMBERLAND, ss.

SUPERIOR COURT
CIVIL ACTION
Docket No. AP-2023-007

WAYNE R. JORTNER, RICHARD
BENNETT, JOHN CLARK, and
NICOLE GROHOSKI,

Petitioners,

v.

SHENNA BELLOWS, in her official
capacity as Secretary of State for the
State of Maine,

Respondent.

DECISION

Pursuant to M.R. Civ. P. 80C, Petitioners Wayne R. Jortner, Richard Bennett, John Clark, and Nicole Grohoski appeal the decision of Respondent Shenna Bellows, Secretary of State for the State of Maine ("the Secretary"), regarding the final wording of the ballot question on the initiative titled "An Act to Create the Pine Tree Power Company, a Nonprofit, Customer-owned Utility" ("the Initiative"). For the following reasons, the Court grants Petitioners' Appeal and remands the matter to the Secretary for revision of the Ballot Question.

I. Background

On November 30, 2022, the Secretary determined that the requisite number of valid signatures were submitted for the Initiative to appear on the ballot. (R. 46-47.) On January 30, 2023, after public comment, the Secretary determined that the final wording of the ballot question on the Initiative would be as follows:

Do you want to create a new quasi-governmental power company governed by an elected board to acquire and operate existing for-profit electricity transmission and distribution facilities in Maine?

Entered on the Docket: 3/4/2023

("the Ballot Question"). (R. 1.) In this action, Petitioners contend that the phrase "quasi-governmental power company" is not understandable to a reasonable voter and is misleading. The Secretary argues that the Ballot Question, including the phrase "quasi-governmental power company," was "carefully drafted by the Secretary to best reflect the substance of the initiative." (Resp't's Br. 1.)

The Initiative would establish the Pine Tree Power Company ("PTPC"), which would "provide for its customer-owners in this State reliable, affordable electric transmission and distribution services." (R. 40.) PTPC would have the power, under certain conditions, to acquire investor-owned transmission and distribution facilities. (R. 41-42.)

The petition for the Initiative was issued on October 22, 2021 ("the Petition"). (R. 38.) The Petition includes a "Summary of Proposed Initiative," an "Estimate of Fiscal Impact," and the language of the proposed legislation ("the Legislation"). (R. 38-45.) The Summary of Proposed Initiative describes PTPC as a "privately-operated, nonprofit, consumer-owned utility controlled by a board the majority of the members of which are elected." (R. 38.)

The Legislation, at proposed 35-A M.R.S. § 4003(1), describes PTPC as "a consumer-owned transmission and distribution utility [that] has all the powers and duties of a transmission and distribution utility under this Title, as affected by the provisions of chapter 35, within the service territories of the investor-owned transmission and distribution utilities whose utility facilities it acquires under this chapter." (R. 40.) The Legislation further states that PTPC would be a "body corporate and politic" governed by a board composed of "13 voting members, 7 of whom are elected members

and 6 of whom are designated members chosen by the elected members.” (R. 40.) The phrase “quasi-governmental” does not appear in the Petition.¹ (R. 38-45.)

II. Legal Standard

The Maine Constitution grants the Maine people the right to legislate by direct initiative. Me. Const. art. IV, pt. 3, § 18. The Secretary is charged with drafting the ballot question for an initiative. Me. Const. art IV, pt. 3, § 20.

Review by the Superior Court of decisions of the Secretary of State regarding the wording of ballot questions is governed by 21-A M.R.S. § 905(2), which provides, in pertinent part:

In reviewing the decision of the Secretary of State, the court shall determine whether the description of the subject matter is understandable to a reasonable voter reading the question for the first time and will not mislead a reasonable voter who understands the proposed legislation into voting contrary to that voter’s wishes.

The Law Court has held that § 905(2) mandates that the Superior Court “independently determine whether the ballot question is understandable and not misleading” based on the record, without deference to the Secretary’s decision.² *Olson v. Sec’y of State*, 1997 ME 30, ¶ 4, 689 A.2d 605.

The Law Court further clarified that the issue to be reviewed is not whether the description of the subject matter is “understandable to a voter who is reading both the question and the legislation for the first time.” *Id.* ¶ 11. Rather, the issue is whether voters who have educated themselves about the initiative, but “who may be reading the question for the first time in the voting booth, will understand the subject matter and the choice presented.” *Id.*

¹ Nor did “quasi-governmental” appear anywhere in the Application for Citizen Initiative. (R. 5-17.)

² The requirement under the Maine Constitution that the question be intelligible is subsumed in § 905. *Olson v. Sec’y of State*, 1997 ME 30, ¶ 6, 689 A.2d 605; see Me. Const. art. IV, pt. 3, § 20.

III. Discussion

The parties devote considerable time to debating whether “consumer-owned” or “quasi-governmental” is a more accurate descriptor of PTPC. Which one is more accurate, however, is not the question to be decided. Rather, the issue is whether the Secretary’s chosen language is understandable and not misleading.

A. Understandable

The Secretary argues that a voter would understand the phrase “quasi-governmental” in the context of the Initiative because (1) the Legislation describes PTPC as a “body corporate and politic,” which is language used in other legislation establishing other quasi-governmental entities; (2) the Legislation provides that the board of directors of PTPC would be elected in statewide elections; and (3) the Legislation identifies certain powers and attributes of PTPC that are similar to those of other quasi-governmental entities.

Although the description “body corporate and politic” may be a fair synonym for “quasi-governmental,” the Legislation does not define “body corporate and politic.” It is unreasonable to expect an average voter to draw the connection between the use of the phrase “body corporate and politic” in the Legislation and “quasi-governmental” in the Ballot Question and emerge with a clear understanding of the meaning of either phrase.

The Secretary suggests that the average voter, pursuant to *Olson*, can be expected to consult “external sources” to understand the Ballot Question, such as other statutes establishing quasi-governmental entities. The Secretary might be correct if another statute clearly defined “quasi-governmental.” In *Olson*, the Law Court noted that “the term ‘Class A crime’ is readily understood by reference to external sources because it is defined by statute and would undoubtedly be discussed in the context of political debate

on the initiative.” 1997 ME 30, ¶ 11, 689 A.2d 605. “Quasi-governmental,” however, is not expressly defined elsewhere in Maine’s statutes.

In other words, the Secretary suggests that the average voter should know of existing quasi-governmental entities (and the fact that they are quasi-governmental), consider the features and organization of those quasi-governmental entities, and extrapolate that the phrase “quasi-governmental” is intended to suggest that PTPC would be governed by an elected board, for example.³ That is too large of a leap to expect a voter to make on a first reading, especially in light of the fact that PTPC is referred to as “consumer-owned” in all other relevant places.

The structure and function of PTPC are at the core of the Initiative. A ballot question which does not use understandable language to describe PTPC, therefore, inadequately describes the subject matter of the Initiative and is insufficient under § 905(2) and *Olson*.

B. Misleading

Petitioners argue that the phrase “quasi-governmental” is misleading because it suggests that PTPC would be funded by taxpayers, rather than consumers. The *Olson* Court interpreted the “misleading” component of § 905(2) as requiring the following showing: “Plaintiffs must demonstrate that the question will mislead reasonable voters, who understand the proposed legislation, into voting contrary to their wishes. Merely demonstrating that the question creates a misleading impression about the legislation is not enough.” 1997 ME 30, ¶ 7, 689 A.2d 605. A question that makes an inaccurate suggestion about legislation is not necessarily misleading. *Id.* ¶¶ 7, 9.

³ Moreover, if the phrase “quasi-governmental” is meant to primarily indicate, as the Secretary suggests, that PTPC will be governed by an elected board, then the remainder of the question is redundant. Thus, the remainder of the question suggests that more is meant by “quasi-governmental.”

The question at issue in *Olson* read: “Should spraying pesticides from the air or putting pesticides in Maine’s waters be a Class A crime?” *Id.* ¶ 3. The plaintiffs argued that the word “putting” did not comport with the initiative language, “cause, by any means, the introduction of,” because it suggested that only intentional conduct would be criminalized. *Id.* ¶ 7. The Law Court held that “putting” was similar to “introduce.” A reasonable voter who understood the initiative would not be misled.

The phrase “quasi-governmental,” is not a synonym for “consumer-owned.” The phrase “quasi-governmental” is not mentioned in the Legislation. Moreover, the Ballot Question at no point refers to consumer ownership—a core feature of the Legislation. A reasonable voter who compared the language of the Ballot Question to the language of the Legislation might be unsure whether the Ballot Question is referring to PTPC. To a voter who did not understand the meaning of “quasi-governmental,” it might, in fact, appear to mean the opposite of “consumer-owned.” Thus, the question creates a risk that voters will be led to vote contrary to their true intention.

IV. Conclusion

For the foregoing reasons, the Court finds that the Ballot Question does not meet the standard of 21-A M.R.S. § 905(2) and must be revised.


The entry is:

Petitioners’ Appeal is GRANTED. This matter is remanded to the Secretary of State for the purpose of revising the final wording of the ballot question in a manner consistent with this decision.

The Clerk is directed to incorporate this Decision into the docket by reference pursuant to Maine Rule of Civil Procedure 79(a).

Dated:

March 9, 2023



MaryGay Kennedy, Justice
Maine Superior Court

STATE OF MAINE
CUMBERLAND, ss

SUPERIOR COURT
DOCKET NO. AP-23-

WAYNE R. JORTNER, RICHARD
BENNETT, JOHN CLARK, and NICOLE
GROHOSKI,

Petitioners,

v.

SHENNA BELLOWS, in her official
capacity as Secretary of State for the State of
Maine,

Respondent.

**PETITION FOR REVIEW OF
FINAL AGENCY ACTION**

Pursuant to 21-A M.R.S. §§ 901(7), 905(2); 5 M.R.S. § 11001; and M.R. Civ. P. 80C, Petitioners Wayne R. Jortner, Richard Bennett, John Clark, and Nicole Grohoski (collectively “Petitioners”) hereby petition this Court to reverse the January 30, 2023 decision (the “Decision”) of the Maine Secretary of State Shenna Bellows (the “Secretary”) determining the final wording of the ballot question to be submitted to the Maine voters on the initiated legislation “An Act to Create the Pine Tree Power Company, a Nonprofit, Customer-owned Utility” (the “Ballot Question”).

By and through the Decision, the Secretary determined that the final wording of the Ballot Question will be as follows:

Do you want to create a new quasi-governmental power company governed by an elected board to acquire and operate existing for-profit electricity transmission and distribution facilities in Maine?

The wording of the Ballot Question as determined by the Secretary violates the requirements of the Maine Constitution, Article IV, Part 3, Section 20, and of Maine law, 21-A M.R.S. § 906(6). Petitioners request that the Secretary’s determination be set aside and the Ballot Question be modified to read:

Do you want to create a new “consumer owned transmission and distribution utility” governed by an elected board to acquire and operate existing for-profit electricity transmission and distribution facilities in Maine?

PARTIES

1. Petitioner Richard Bennett is a resident of Oxford, Maine, and is a member of the Maine Senate. He was the lead Senate sponsor of LD 1708, the bill that preceded the ballot question that is the subject matter of this Petition. Senator Bennett is one of six Maine voters who signed the application to the Secretary to circulate the petition for the ballot question here under consideration (the “Petition”). He signed the Petition and was a circulator of the Petition. He submitted written comments to the Secretary objecting to the use of the term “quasi-governmental” to refer to the entity to be created by the Ballot Question.

2. Petitioner John Clark is a resident of Linneus, Maine, and a former General Manager of the Houlton Water Company, a “consumer-owned transmission and distribution utility” operating in the area of Houlton, Maine. He is one of the six Maine voters who signed the application to the Secretary of State to circulate the Petition. Mr. Clark shares the concerns expressed in the administrative record that customer-owners of the Houlton Water Company and other Maine consumer-owned utilities, residing in 98 Maine municipalities, will either fail to understand the unfamiliar and challenging phrase “quasi-governmental,” and/or will be misled by the phrase to think the state will support the company by funding or backing its debt, thus putting these voters on the hook for any risks associated with the transaction.

3. Petitioner Nicole Grohoski is a resident of Ellsworth and a member of the Maine State Senate. Senator Grohoski is one of six Maine voters who applied to the Secretary of State to circulate the Petition. She also signed the Petition, circulated the Petition for signatures, and submitted comments objecting to the use of the term “quasi-governmental” to describe the Pine Tree Power Company.

4. Petitioner Wayne Jortner is a resident of Freeport, Maine, and a former member of the legal staff of the Maine Public Advocate. He is a proponent of efforts to replace Central Maine Power and Versant Power with a consumer-owned electric utility. He is one of the original six Maine voters who signed application for the Petition. He served as a circulator of the Petition and also filed comments with the Secretary objecting to the term “quasi-governmental” as tending to confuse and mislead Maine voters as to the nature of the entity that the voters will consider when voting on the Ballot Question.

5. Respondent Shenna Bellows, in her official capacity as Secretary of State for the State of Maine, is the constitutional officer charged with administering 21-A M.R.S. §§ 901–907, which governs direct petitions for initiated legislation, including the determination of the language of the ballot questions by which the initiated legislation will be submitted to Maine’s voters in referenda.

JURISDICTION AND VENUE

6. The Court has subject matter jurisdiction over this petition for review pursuant to 4 M.R.S. § 105(3)(A), 5 M.R.S. § 11001(1), and 21-A M.R.S. § 905(2).

The Court may exercise personal jurisdiction over the Secretary because this action seeks review of actions taken by the Secretary in her official capacity as an officer of the State of Maine under the Maine Constitution.

7. Venue is proper in Cumberland County pursuant to 5 M.R.S. § 11002(1)(A) because at least one of the Petitioners is a resident of Cumberland County.

LEGAL AND FACTUAL ALLEGATIONS

8. Article IV, Part Third, Sections 18, 19, 20, and 22 of the Maine Constitution and 21-A M.R.S. §§ 901-907 address the procedures related to citizen-initiated legislation. The sections of the Constitution and statutes most relevant to the issues raised by this action are:

Maine Constitution, Article IV, Part Third, §20:

[Excerpt].....The full text of a measure submitted to a vote of the people under the provisions of the Constitution need not be printed on the official ballots, but, until otherwise provided by the Legislature, the Secretary of State shall prepare the ballots in such form as to present the question or questions concisely and intelligibly.

21 M.R.S. §906(6):

6. Wording of ballots for people's veto and direct initiative referenda. Ballots for a statewide vote on a people's veto referendum or a direct initiative must set out the question or questions to be voted on as set forth in this subsection.

A.

B. The Secretary of State shall write the question in a clear, concise and direct manner that describes the subject matter of the people's veto or direct initiative as simply as is possible.

9. On August 16, 2021, six individual Maine citizens and voters including Petitioners Jortner, Bennett Grohoski, and Clark filed with the Secretary an application for a Petition for direct initiative of legislation to enact “An Act to Create the Pine Tree Power Company, a Nonprofit, Customer-owned Utility.”

10. On October 22, 2021, the Secretary approved and issued the form of the Petition to be submitted for signature by the requisite number of Maine voters.

11. The Petition was duly printed and circulated among the voters of the State of Maine. On October 31, 2022, signed Petitions with over 80,000 signatures were returned to the Secretary of State.

12. On November 30, 2022, the Secretary determined that 69,735 of the signatures submitted by Petition proponents were valid. Upon finding the Petition was supported by sufficient number of valid signatures, the Secretary found the Petition to be valid.

13. On December 22, 2022, the Secretary released for public comment a proposed ballot question for the initiative in the following form.

Do you want to create a new quasi-governmental owned power company governed by an elected board to acquire and operate existing electricity transmission and distribution facilities in Maine?

14. Over the next thirty days, the Secretary received some 168 written comments from members of the public, including some of the Petitioners. Among the comments were the following statements on the use of the term “quasi-governmental owned power company” in the proposed ballot question:

- a. “[A] complex, hazy, 5-word phrase that is not used in Maine statute, and will doubtless confuse many voters[.]”
- b. “[I]naccurate and misleading. Although there will be appropriate government regulation, there will not be government ownership to any degree.”
- c. “[A] vague term that doesn’t really impart any useful information to voters. Better to just be clear. Call it what it is: local, consumer owned.”
- d. “[V]ague. According to the dictionary it means ‘supported by the government but managed privately’. The bill should be more clear regarding who will own the utility and how it will be managed ...
- e. “What does “quasi-governmental’ even mean? Please use clear language: ‘consumer-owned’ is it.”
- f. “[I]naccurate The words ‘quasi-government organization’ have legal meaning different from what is proposed by the initiative. Further, most voters do not know the meaning of these words, so they will be confused about what they are voting on.”

15. On January 30, 2023, the Secretary issued the Decision, in which she made her determination of the final wording of the Ballot Question to be submitted to the voters in the referendum as follows:

Do you want to create a new quasi-governmental power company governed by an elected board to acquire and operate existing for-profit electricity transmission and distribution facilities in Maine?

16. The Secretary's determination of the final language for the Ballot Question includes the reference to the entity to be created as a "quasi-governmental power company." This terminology is not an accurate description of the entity that the initiated legislation creates. That entity is more accurately described as a "consumer owned transmission and distribution utility," which tracks the language used to describe the Pine Tree Power Company in the Petition.

17. The term "quasi-governmental" power company suggests some kind of agency of government that produces and sells power. The Pine Tree Power Company is not an agency of government and has no governmental functions as those are commonly understood. Its occasional designation as "quasi-municipal" relates only to the nature of its debt obligations as being tax-exempt. It is also not a "power company." It will not generate or sell any electricity. Its sole function will be to transmit electricity generated by others to electric power customers. It is thus a "transmission and distribution utility" as defined in Title 35-A, not a "power company."

18. As a matter of dictionary definition, the term "quasi-governmental" means an entity "supported by the government but privately managed," the exact opposite of the Pine Tree Power Company, which is publicly governed but entirely supported by its private consumers.

19. As acknowledged by the Secretary, the initiated legislation would specifically define Pine Tree Power Company as a "consumer-owned transmission and distribution utility" along with similar entities such as the Houlton Water Company, the Madison Electric Works, and the Kennebunk Power District.

20. To the extent that it is important to convey public accountability and transparency, the following phrase “governed by an elected board” makes this clearer and more understandable than reference to the recondite term “quasi-governmental.”

21. The Petition signed by more than 69,000 Maine voters in order to initiate the upcoming vote speaks in terms of “consumer owned” or “customer owned” utility, not a “quasi-governmental” entity.

22. To voters considering whether to bring the Pine Tree Power Company to life, probably the most important single question is whether the Maine taxpayers will be financially responsible for the new entity. The term “quasi-governmental” carries at least a connotation of governmental finances. The term “consumer owned transmission and distribution utility,” which would apply to the Pine Tree Power Company by statutory definition, accurately identifies the consumers, not the taxpayers, as those ultimately responsible for the financial security of the utility.

23. For the foregoing reasons the term “quasi-governmental power company” proposed by the Secretary is not concise and intelligible and does not describe the subject matter of the direct initiative as simply as is possible.

COUNT I

Complaint for Review of Final Agency Action

24. Petitioners hereby incorporates by reference the allegations asserted in all paragraphs set forth above with the same effect as if set forth in full herein.

25. Pursuant to the Administrative Procedures Act, the Court has the authority to reverse or modify the decision of an agency when it determines that the agency’s “decision[]” is “[i]n violation of constitutional or statutory provisions.” 5 M.R.S. § 1107(4)(C).

26. The Decision violates Article IV, Part 3, Section 20 of the Maine Constitution, which required the Secretary to present the Ballot Question “concisely and intelligibly.” Me. Const. art. IV, pt. 3, § 20.

27. The Decision violates 21 M.R.S. § 906(6), which required the Secretary to write the Ballot Question “in a clear concise and direct manner that described the subject matter of the . . . direct initiative as simply as possible.” 21 M.R.S. §906(6).

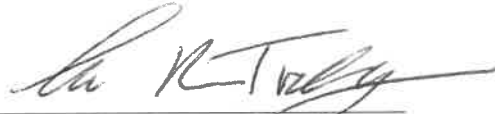
28. These constitutional and statutory violations foreclose the possibility that the voters will “understand the subject matter and choice presented” by the Ballot Question. *Olson v. Secretary of State*, 1997 ME 30, ¶ 11, 689 A.2d 605.

29. As a result of the foregoing, the Court should exercise its authority under 5 M.R.S. § 1107(4)(C) to modify the Decision to ensure that the Ballot Question accords with all constitutional and statutory mandates.

WHEREFORE, Petitioners ask that this Court:

1. Find the use of the term “quasi-governmental power company” to describe the entity to be created by the initiated legislation in the Ballot Question to be not in compliance with the Constitutional and statutory requirements for the wording of ballots in citizen referenda;
2. Find that the use of that term renders the Ballot Question in violation of constitutional and statutory provisions, specifically Article IV, Part 3, Section 20 of the Maine Constitution and 21 M.R.S. § 906(6);
3. Modify the Decision by substituting the term “consumer-owned transmission and distribution utility” for “quasi-governmental power company” in the Ballot Question; and
4. Grant such other relief as the Court deems just and proper.

Dated: February 9, 2023.



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Department of the Secretary of State

Bureau of Corporations, Elections and Commissions

Shenna Bellows
Secretary of State

Julie L. Flynn
Deputy Secretary of State

January 30, 2023

Wayne R. Jortner
11 Fox Hill Road
Freeport, ME 04032

Re: Ballot Question for "An Act To Create the Pine Tree Power
Company, a Nonprofit, Customer-owned Utility"

Dear Mr. Jortner:

I am writing to notify you of my determination of the wording of the ballot question for your initiated legislation, "An Act To Create the Pine Tree Power Company, a Nonprofit, Customer-owned Utility" (the "Act"). I am required to issue the final ballot question for a direct initiative within 10 days of the close of the public comment period on the proposed question. 21-A M.R.S. § 901(4).

On November 30, 2022, I certified that the initiators of the Act had obtained sufficient valid signatures on their petition to submit it to the Legislature. Thereafter, on December 21, 2022, I released a proposed ballot question for the initiative: "Do you want to create a new quasi-governmental owned power company governed by an elected board to acquire and operate existing electricity transmission and distribution facilities in Maine?" Members of the public had 30 days to submit comments on the proposed wording. During that period, this Office received 168 comments. The comment period closed on January 20, 2023.

I have reviewed and considered all public comments submitted during the comment period. Based on my consideration of those comments, I have determined that the final wording of the ballot question will be as follows:

**Do you want to create a new quasi-governmental
power company governed by an elected board to
acquire and operate existing for-profit electricity
transmission and distribution facilities in Maine?**

Analysis

The Maine Constitution requires ballot questions to be presented "concisely and intelligibly." Me. Const. art. IV, pt. 3, § 20. Similarly, state law requires that a ballot

question be written “in a clear, concise and direct manner that describes the subject matter of the . . . direct initiative as simply as is possible.” 21-A M.R.S. § 906(6). The Maine Supreme Judicial Court has explained that the question should allow voters “to understand the subject matter and choice presented.” *Olson v. Sec’y of State*, 1997 ME 30, ¶ 11, 689 A.2d 605. However, the wording of the question may also “assum[e] that the voters have discharged their civic duty to educate themselves about the initiative.” *Id.* I conclude that the wording announced above accurately characterizes the subject matter of the ballot initiative and the choice presented to voters and otherwise satisfies the legal standards set forth above.

Below I respond by category to the public comments received concerning the draft question:

“Quasi-Governmental.” Commenters were split on whether the entity to be created by the initiated bill can or should be described as “quasi-governmental.” Proponents of phrases such as “consumer owned” or “nonprofit” pointed out that those terms are used in the proposed legislation and current law. Proponents of “quasi-governmental” argued that it better reflected nature of the proposed entity. After considering these arguments, I conclude that “quasi-governmental” is the descriptor that will enable voters to best understand the choice presented by the initiative. The new entity is defined in the Act as a “body corporate and politic,” a phrase used in the Maine Revised Statutes in establishing other quasi-governmental entities. It would be classified within Title 5, § 12004-G, which lists “general government” entities. The new entity would be permitted to borrow under provisions applicable to quasi-municipal entities. A majority of the board of directors are elected in statewide elections governed by Title 21-A of the Maine Revised Statutes, with candidates eligible to seek Maine Clean Election Act funds. The entity will be subject to the Freedom of Access Act and may adopt regulations having the force of law under the Maine Administrative Procedure Act. All of the above factors indicate that the entity is properly understood as “governmental” in nature. Moreover, because the entity will function as an enterprise, with its day-to-day operations conducted by a nongovernmental entity contracted by the board, it is appropriate to characterize it as “quasi” governmental.

I recognize that “consumer owned” is a phrase that is used in current statute and that the initiative would amend the definition of that phrase to include the new entity. *See* 35-A M.R.S. § 3501. Although I accept that the phrase would become an accurate descriptor of the entity as a legal matter should the initiative be enacted by definition, I am concerned that the phrase would nevertheless suggest to voters that consumers would be acquiring shares or some other formal ownership stake in the new entity. Because “quasi-governmental” is an accurate descriptor with no such potentially misleading connotations, I have concluded it is preferable to “consumer owned.”

I have rejected the term “non-profit” for similar reasons. While the new entity would be “non-profit” in the sense that it will be pursuing objectives other than profits for investors, it will not be a non-profit corporation under Maine’s

Nonprofit Corporation Act, which excludes any “body politic and corporate of the State.” 13-B M.R.S. § 102(4)(C). Use of this term could therefore be misconstrued by voters. It would also add to the length of the question, contrary to my mandate to describe the subject matter as simply as possible.

Finally, several commenters also objected to the addition of “owned” after “quasi-governmental,” suggesting that it was not grammatically sound. I agree with these comments and am therefore striking “owned” from the proposed question.

“Reliable, Affordable Energy.” Several commenters felt that the question should specify that the new entity will be required to focus on “reliable, affordable electricity.” I have concluded that it is not necessary to include this additional language to allow voters to understand the subject matter of the initiative. The initiative specifies that the company will operate as a consumer-owned transmission and distribution utility with all of the powers and duties of such a utility. The question as proposed adequately conveys this core mission. Moreover, the initiated bill specifies eight purposes of the new company, not all of which relate to reliable, affordable electricity. Adding a complete description of the entity’s purposes would add undue length to the question. And, finally, including the proposed language could be misconstrued by voters as a prediction of results rather than as a required focus of the new entity. Arguments about the effects of the initiated bill are best left to the public square.

“For Profit”; “Foreign Owned.” A number of commenters expressed concern that the question could be misunderstood to suggest that the new entity will acquire *all* transmission and distribution facilities in Maine. Most of these commenters suggested that the question therefore be amended to describe the facilities to be acquired as “for-profit” and “foreign owned.” I agree that the proposed question could be misconstrued as providing for acquisition of all such facilities without limitation. Given the Act’s limitation of the new entity’s acquisition powers to facilities owned, operated, or held by “investor-owned” utilities, I have determined that it is appropriate to add the term “for-profit” to describe the facilities to be acquired. I have determined that “for profit” adequately describes in plain English the limitation on the entity’s acquisition power and will thereby avoid voter confusion over the scope of the entity’s powers. However, I have rejected the use of the further descriptor “foreign owned.” Nothing the legislation limits the new entity’s acquisition powers to foreign-owned entities. Inclusion of this term would not accurately describe the scope of the entity’s powers.

Composition of the Board. Several commenters suggested that the question should make clear that some members of the entity’s board will be “appointed” rather than elected. I have declined to make any changes to the question based on these comments. Use of the term “appointed” could be misconstrued by voters to suggest that the Governor or some other member of the Executive Branch appoints members to the board. In fact, the elected board members will

themselves “designate” (i.e., elect) the remaining 6 members. Moreover, board members directly elected by voters will comprise a majority of the board. It is therefore accurate and will not mislead voters to refer to the board as “elected.”

Requirement to Acquire; Eminent Domain Power. Several commenters suggested that the question make clear that the new entity *must* acquire the specified transmission and distribution facilities and that it may use eminent domain to do so. I have concluded that the question as drafted adequately conveys to voters the nature of the new entity’s mandate and that further specificity would unnecessarily complicate the language of the question.

Costs of the Proposal. Several commenters suggested that the question should convey that ratepayers will bear the costs of the required acquisitions. Other commenters cited evidence suggesting that ratepayers will experience net savings as a result of the new entity. I have determined that the ballot question need not include any specific reference to costs in order to allow voters to understand the nature of the choice presented. The question indicates that the new entity will “acquire” the facilities at issue, which implies an associated cost.

Readability of the Question. One commentator expressed concern about the complexity of the question and the difficulty that some voters could experience in comprehending it. However, the subject matter of the Act is itself highly complex and its text lengthy. Given those complexities, I believe the final language complies with my dual obligations to present the question (a) accurately and (b) as simply as possible. I note that the alternative wordings proposed by commenters were, by and large, similarly complex.

Other Comments. In addition to the comments described above, I considered all other comments submitted during the comment period. I determined that none of these remaining comments warranted changes to the wording of the ballot question.

A voter named in the application for this direct initiative as well as any other aggrieved voter may appeal this final decision to Superior Court within 10 days of the date of this decision, pursuant to 21-A M.R.S. § 905(2).

Sincerely,



Shenna Bellows
Secretary of State

Be it enacted by the People of the State of Maine as follows:

Sec. 1. 5 MRSA §12004-G, sub-§36 is enacted to read:

36.

<u>Public</u>	<u>Pine Tree Power Company Board</u>	<u>\$110/Day and</u>	<u>35-A MRSA</u>
<u>Utilities</u>		<u>Expenses</u>	<u>§4002</u>

Sec. 2. 21-A MRSA §354, sub-§5, ¶G, as enacted by PL 1985, c. 161, §6, is amended to read:

G. For a candidate for State Representative, at least 50 and not more than 80 voters;
and

Sec. 3. 21-A MRSA §354, sub-§5, ¶H, as enacted by PL 1985, c. 161, §6, is amended to read:

H. For a candidate for county charter commission member, at least 50 and not more than 80 voters; and

Sec. 4. 21-A MRSA §354, sub-§5, ¶I is enacted to read:

I. For a candidate for member of the Pine Tree Power Company Board under Title 35A, section 4002, subsection 2, paragraph A, at least 300 and not more than 400 voters.

Sec. 5. 21-A MRSA §1011, first ¶, as amended by PL 2013, c. 334, §2, is further amended to read:

This subchapter applies to candidates for all state and county offices and to campaigns for their nomination and election. Candidates for municipal office as described in Title 30-A, section 2502, subsection 1 and candidates for the Pine Tree Power Company Board as described in Title 35-A, section 4002 are also governed by this subchapter. The commission does not have jurisdiction over financial activities to influence the nomination or election of candidates for federal office.

Sec. 6. 35-A MRSA §1511-A is enacted to read:

§1511-A. Fitness to serve

The commission shall find a transmission and distribution utility with 50,000 or more customers unfit to serve and shall require and ensure the sale of the utility, to be completed within 24 months, if 4 or more of the following statements are true of the utility:

1. Customer satisfaction. The utility has been rated for 2 or more of the past 5 years among the lowest decile of utilities of a similar size for customer satisfaction on a nationally recognized survey of United States utility business or residential customers;

2. Reliability. The utility has been found by the commission or by the United States Energy Information Administration for 2 or more of the past 5 years to have overall reliability in terms of outage minutes per year, with or without major event days, in the lowest decile of utilities of a similar size in the country;

3. Affordability. In 2 or more of the past 5 years, the utility charged residential delivery rates reasonably estimated to be in the highest decile among utilities of a similar size in the country, based on data from the United States Energy Information Administration and based on the commission's analysis of average delivery rates as a proportion of the average total bill for integrated utilities;

4. Employees. The utility has within the previous year contracted with a business to perform work valued at more than \$100,000 that could reasonably have been performed by qualified, nonexempt employees of the utility;

5. Security. The utility owns critical infrastructure vital to the security and welfare of the State and is presently owned, either wholly or in a part greater than 5%, by a government that does not represent or govern the captive customers of the utility;

6. Customer obligations. The utility, due to its corporate structure, requires that customers pay for the cost of the utility's corporate taxes, and also pay for shareholder profits exceeding 10% on prudent capital investment in transmission infrastructure, with little to no risk for poor performance;

7. Disaster assistance. The utility, due to its corporate structure, may require that customers pay directly or indirectly for 90% or more of damages to the utility's assets caused by extreme weather events, and may also deny the utility access to federal emergency management assistance to reduce or eliminate these costs; or

8. Priorities. The utility, due to its corporate structure and fiduciary obligations, is unable to place the needs of customers, workers or the State's climate and connectivity goals ahead of the desires of shareholders to earn a profit.

Sec. 7. 35-A MRSA §3501, sub-§1, ¶D, as amended by PL 2019, c. 311, §2, is further amended to read:

D. The portion of any municipal or quasi-municipal entity located in the State providing transmission and distribution services; ~~and~~

Sec. 8. 35-A MRSA §3501, sub-§1, ¶E, as amended by PL 2019, c. 311, §2, is further amended to read:

E. Any transmission and distribution utility wholly owned by a municipality located in the State; ~~and~~

Sec. 9. 35-A MRSA §3501, sub-§1, ¶F is enacted to read:

F. The Pine Tree Power Company established in chapter 40.

Sec. 10. 35-A MRSA §3502, first ¶, as amended by PL 1999, c. 398, Pt. A, §86 and affected by §§104 and 105, is further amended to read:

Notwithstanding section 310, any consumer-owned transmission and distribution utility, except for the Pine Tree Power Company established in chapter 40, that proposes to increase rates, tolls or charges by not more than 15% of the utility's annual operating revenues or proposes to decrease rates, tolls or charges in any amount may elect to set rates pursuant to this section and section 3503.

Sec. 11. 35-A MRSA §3506 is enacted to read:

§3506. Voter approval conditioned on parity

Notwithstanding any other provision of law, neither utility debt nor the incurrence of utility debt is subject to statewide voter approval, unless and until voter approval of utility debt and of the incurrence of such debt is required equally for both investor-owned and consumer-owned utilities operating in the State.

Sec. 12. 35-A MRSA c. 40 is enacted to read:

CHAPTER 40

PINE TREE POWER COMPANY

§4001. Definitions

As used in this chapter, unless the context otherwise indicates, the following terms have the following meanings.

1. Acquired utility. "Acquired utility" means an investor-owned transmission and distribution utility whose facilities or property are purchased or intended for purchase pursuant to this chapter.

2. Board. "Board" means the Pine Tree Power Company Board established in Title 5, section 12004G, subsection 36.

3. Company. "Company" means the Pine Tree Power Company established in section 4002.

4. Cost of service. "Cost of service" means the total amount that must be collected by the company to recover its costs but does not include any return on capital investment unless a return is required as security for debt service.

5. Customer-owner. "Customer-owner" means a person to whom the company provides electricity.

6. Generating source. "Generating source" means a machine or device that produces electric energy by any means.

7. Utility facility. "Utility facility" means any portion of a plant used or useful in providing transmission and distribution utility service and includes, but is not limited to, transmission lines, office buildings, equipment and transportation equipment.

8. Utility property. "Utility property" means any tangible or intangible asset, liability, obligation, plan, proposal, share, agreement or interest of a utility; any facility in development or planning by the utility as of January 1, 2020; and, without limitation, the entire utility and any part or portion of the utility.

§4002. Pine Tree Power Company established; purpose

The Pine Tree Power Company is established to provide for its customer-owners in this State reliable, affordable electric transmission and distribution services in accordance with this chapter.

1. Company purposes. The company shall use its access to low-cost capital and its ability to manage the electric transmission and distribution system in a manner that is not focused on ensuring shareholder profits for the following purposes:

A. To deliver electricity to the company's customer-owners in a safe, affordable and reliable manner;

B. To ensure excellence, timeliness and accuracy in billing, metering and customer service;

C. To provide an open, supportive and competitive platform to develop and deploy renewable generation, storage, efficiency and beneficial electrification technologies;

D. To assist the State in rapidly meeting or exceeding the climate action plan goals established in Title 38, chapter 3-A;

E. To improve the State's Internet connectivity through more affordable access to utility poles and other infrastructure in unserved or underserved areas of the State, as defined in section 9202, subsection 5;

F. To advance economic, environmental and social justice and to benefit company workers and all communities in the State;

G. To provide for transparent and accountable governance; and

H. To support, secure and sustain economic growth and benefits for the State.

2. Governance; board. The company is created as a body corporate and politic and is governed by the Pine Tree Power Company Board in accordance with this section.

The board is composed of 13 voting members, 7 of whom are elected members and 6 of whom are designated members chosen by the elected members. All members must be residents of the State.

A. As of the last date for filing a nomination petition under Title 21-A, section 354, each of the 7 elected members must be a legal citizen of the United States for at least 5 years, must be at least 21 years of age, must be a legal Maine resident for at least one year, must be a resident of the area the member represents as provided in this paragraph for at least 3 months and may not hold a state elected office. Each elected member represents 5 of the State's 35 State Senate districts, as set out in Title 21-A, section 1203-B, as follows:

(1) One member represents State Senate districts 1 to 5;

(2) One member represents State Senate districts 6 to 10;

(3) One member represents State Senate districts 11 to 15;

(4) One member represents State Senate districts 16 to 20;

(5) One member represents State Senate districts 21 to 25;

(6) One member represents State Senate districts 26 to 30; and

(7) One member represents State Senate districts 31 to 35.

If during an elected member's term the member's place of residence as a result of reapportionment is no longer included in the area the member was elected to represent, the member may continue to serve the remainder of the term.

B. The 6 designated members must be selected by the elected members. The designated members must collectively possess expertise and experience across the following 6 areas:

- (1) Utility law, management, planning, operations, regulation or finance;
- (2) The concerns of utility employees and other workers;
- (3) The concerns of commercial or industrial electricity consumers;
- (4) Electricity generation, storage, efficiency, delivery, cybersecurity, connectivity or related technologies;
- (5) Planning, climate mitigation, adaptation or the environment; and
- (6) Economic, environmental and social justice, including the needs of low-income and moderate-income persons.

C. Candidates for election to the board pursuant to paragraph A are eligible for funding through the Maine Clean Election Act, in amounts and under terms commensurate with those for candidates for the State Senate. The Commission on Governmental Ethics and Election Practices, established pursuant to Title 5, section 12004-G, subsection 33, shall adopt rules to implement this paragraph. Rules must include, at a minimum, the procedures for qualifying and certification and for allocation of distributions from the fund and other provisions necessary to ensure consistency with the provisions of the Maine Clean Election Act. Rules adopted pursuant to this paragraph are major substantive rules as defined in Title 5, chapter 375, subchapter 2-A.

D. Candidates for election to the board pursuant to paragraph A are subject to the requirements of Title 21A, chapter 13.

E. The nomination of candidates for elected members of the board is governed by Title 21-A, chapter 5, subchapter 2, and the determination of the election is governed by Title 21-A, section 723-A. The Secretary of State may adopt rules governing the election of members of the board and shall consult with the commission in developing the rules. Rules adopted under this paragraph are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A.

3. Term of office. An elected member of the board serves for a term of 6 years and a designated member of the board serves for a term of 6 years. An elected member serves from January 1st to December 31st and a designated member serves from March 1st to the end of February. A majority of members shall declare a vacancy on the board upon the resignation, death or incapacitation of an elected member, in the event that a member is absent without leave of the chair for at least half of all board meetings held in a 180-day period or in the event of a member's gross and continual neglect of duty. If there is a vacancy on the board of a designated member, it must be filled within 180 days in the same manner as described in subsection 2, paragraph B, and the person selected to fill a vacancy serves for the unexpired term of the member whose vacancy the person is filling. If there is a vacancy on the board of an elected member, the board shall notify the Secretary of State, who shall establish a deadline of no sooner than 60 days after being notified of the vacancy to accept nomination petitions for a special election. A special election must be held within 180 days of notification of the vacancy and declared in the manner prescribed by Title 21-A, section 366. The person elected to fill a vacancy serves for the unexpired

term of the member whose vacancy the person is filling. Designated members may be reselected and elected members may be reelected.

4. Quorum and chair. Seven members of the board constitute a quorum. The board shall elect from its members a chair and a vice-chair. The vice-chair shall serve as acting chair in the absence of the chair.

5. Voting. Except as otherwise provided in this Title, all decisions of the board must be made by a majority vote of the members present. Whenever possible, the board shall attempt to achieve consensus among members.

6. Bylaws; due diligence. Prior to making a purchase price offer for any utility facility or utility property, the board shall adopt bylaws, retain expert professional staff and consultants, secure initial financing, conduct due diligence as it considers necessary and develop a transition plan and a business plan for the company.

7. Board review. Four years after the first meeting of the board, the board shall review the effectiveness of the company governance structure and shall report to the joint standing committee of the Legislature having jurisdiction over energy and utilities matters the outcome of this review. The report may suggest necessary changes to the governance structure of the company. The committee may report out legislation pertaining to the recommendations in the report.

§4003. Powers and duties; acquisition of utility facilities and utility property

1. Powers; generally. The company is a consumer-owned transmission and distribution utility and has all the powers and duties of a transmission and distribution utility under this Title, as affected by the provisions of chapter 35, within the service territories of the investor-owned transmission and distribution utilities whose utility facilities it acquires under this chapter.

2. Limits on company; generating property. The company may not own or operate a generating source or purchase electric capacity or energy from a generating source, except as the commission may approve in order to allow the company to maintain or improve system reliability.

3. Private sector, competitive, performance-based operations. The company shall contract by means of a competitive public solicitation the services of at least one qualified nongovernmental entity, referred to in this chapter as "the operator" or "the operations team," to provide cost-effective, private sector operations, maintenance, customer accounts management and customer service and information and to assist as necessary in regulatory affairs, capital planning and administrative services. The company may not contract with an operator that has managed a company found to be unfit within the previous 10 years. The company may contract with separate operators for each of the service territories of the acquired utilities, or to meet discrete operations, maintenance or other requirements. In requesting and evaluating bids pursuant to this section, the board shall consider anticipated costs; professional, operational and managerial experience; familiarity with the systems to be administered; and ability to improve customer service and employee morale. The company may establish additional criteria for its solicitation and shall determine the period and the specific terms of each operations contract. The commission shall review and approve, reject or approve with conditions any contract between the company and an operator before it takes effect. A contract with an operations team must reward proven

performance, not the provision of capital, and must provide for the efficient and effective fulfillment of the company's purposes under section 4002.

4. Retention of employees. The operator shall hire any person who was an employee of the acquired utility at the time the company acquired the utility facilities who is a qualified, nonexempt employee subject to collective bargaining agreements of the acquired utility and may hire any other person who was an employee of the acquired utility with the exception of those employees on the executive board of the acquired utility. To ensure continuity and an experienced local workforce, the operations team shall offer to these employees a retention bonus of 8% of annual gross pay for the first year of work and 6% of annual gross pay for the 2nd year of work. This bonus must be payable on the earlier of the anniversary of the date of hire by the operator and the date of a termination of employment that occurs following the date of hire, as long as the termination is due to the employee's death or disability, by the employer without cause or by the employee for good reason. The operations team shall maximize opportunities for internal promotion, additional staffing and on-the-job training for all employees and may not contract with other businesses to perform work that could reasonably have been performed by qualified, nonexempt employees of the operations team.

5. Rights of employees. The employees of the operations team retained to operate the company's facilities are private employees. Notwithstanding any provision of law to the contrary, the company shall at a minimum accord all qualified, nonexempt employees and their representatives the same rights as would an investor-owned transmission and distribution utility. The operator may not limit or impair the ability and right of its employees to strike or to engage in any work stoppage or slowdown and may not hire replacement employees permanently during an employee strike. The operator shall notify employee representatives of new hires and shall allow representatives of employees reasonable access to work sites during work hours. The operator shall assume all retirement benefit obligations to the employees of and retirees of an acquired utility, unless these obligations have remained with the acquired utility, its corporate parent or a pension plan trust regulated by the federal Employee Retirement Income Security Act of 1974. The operator shall honor and maintain the terms of any collective bargaining agreements in effect at the time the company acquired the investor-owned transmission and distribution utility for the remaining term of any collective bargaining agreement, except that, when 2 or more contracts exist, the employees' wages, salaries and benefits must be made reasonably equal to the higher of those provided in the contracts or must exceed those previously paid by the acquired utility.

Upon the conclusion of a contract pursuant to subsection 3, the company, in soliciting for a new contract, shall give preference to service providers that agree to maintain or improve the terms of the collective bargaining agreement in existence on the conclusion of the prior contract.

6. Acquisition of utility facilities and utility property. Notwithstanding any other provision of this Title, rules adopted under this Title or any other applicable law to the contrary, the company shall purchase or acquire by the exercise of the right of eminent domain all utility facilities in the State owned or operated or held for future use by any investor-owned transmission and distribution utility, in accordance with this subsection, and may also purchase or acquire by the exercise of the right of eminent domain in accordance with this subsection any other investor-owned transmission and distribution

utility property should the board determine such an acquisition to be in the interest of its customer-owners. The company shall finance the purchase or acquisition of utility facilities or utility property under this subsection by issuing debt in accordance with chapter 9. The board may not purchase or acquire by the right of eminent domain any utility facilities or utility property under this subsection until 12 months after the effective date of this chapter or 6 months after the first meeting of the board, whichever is later.

A. Within 18 months after the effective date of this chapter or 12 months after the first meeting of the board, whichever is later, unless further delayed to a date certain by a vote of at least 9 members of the board, the company shall:

(1) Identify the utility facilities and any other utility property in the State owned or operated or held for future use by any investor-owned transmission and distribution utility to be purchased by the company;

(2) Determine a purchase price offer to be made for the utility facilities and other utility property. The purchase price offer must include compensation for the cost of preparing and submitting necessary regulatory filings, including but not limited to those required by the federal Department of Energy, Federal Energy Regulatory Commission; and

(3) Deliver notice of the purchase price offer, including detailed description of the utility facilities and other utility property to be purchased, to the investor-owned transmission and distribution utility that owns, operates or holds for future use the subject utility facilities and utility property.

By a vote of at least 9 members of the board, the company may delay by up to one year the purchase of the utility facilities and any other utility property of one of the 2 investor-owned transmission and distribution utilities in the State and proceed with the purchase of the utility facilities and any other utility property of the other investor-owned transmission and distribution utility in the State. A delay approved by the board under this paragraph may be renewed once in the same manner for up to one additional year.

B. After the receipt of a notice of the purchase price offer under paragraph A, subparagraph (3), the investor-owned transmission and distribution utility may, within 30 days of the date of receipt, submit a counteroffer to the company. If the company rejects the counteroffer, within 30 days of the date of receipt of the rejection the investor-owned transmission and distribution utility may petition the Superior Court of Kennebec County to determine and order an alternative purchase price for the subject utility facilities or utility property in accordance with this paragraph. The purchase price determined by the court must include compensation for the cost of preparing and submitting necessary regulatory filings, including but not limited to those required by the federal Department of Energy, Federal Energy Regulatory Commission. After the filing of a petition by an investor-owned transmission and distribution utility under this paragraph, the Superior Court, as expeditiously as possible, shall:

(1) Select, in consultation with the company and the petitioner, a referee or referees with relevant expertise and capabilities to determine a recommended purchase price for the utility facilities and utility property;

(2) Complete a trial or hearing, as appropriate, for the presentation of evidence to referees, who shall submit a recommended purchase price to the court; and

(3) Render a decision and, based upon the recommended purchase price submitted under subparagraph (2) and any other information available to the court, order a purchase price to be paid by the company to the petitioner for possession and ownership of the subject utility facilities and utility property.

The decision of the Superior Court under this paragraph is appealable to the Law Court as in any civil action.

C. The taking of utility facilities and utility property by the company is governed by this paragraph.

(1) Notwithstanding chapter 65 or any other provision of law to the contrary, if a petition is filed under paragraph B and if the company and subject utilities do not reach an agreement, the company shall, after any appeals are resolved, immediately take the subject utility facilities and utility property identified in paragraph A at the final price rendered by the court.

(2) Notwithstanding chapter 65 or any other provision of law to the contrary, if a petition is not filed under paragraph B and if the company and subject utilities do not reach an agreement, the company shall immediately take the subject utility facilities and utility property identified in paragraph A at the purchase price offer.

Within 45 days of the date upon which the purchase price is either mutually agreed upon by the company and the investor-owned transmission and distribution utility or is finally determined through the judicial process set forth under paragraph B, the investor-owned transmission and distribution utility shall prepare and submit any regulatory filings necessary to the transfer of subject utility facilities and utility property, including but not limited to those required by the federal Department of Energy, Federal Energy Regulatory Commission. If the investor-owned transmission and distribution utility does not prepare and submit such filings within 45 days, the company may request that the commission investigate the utility's failure to prepare and submit the filings. Upon such a request from the company, the commission shall, in a timely manner, investigate the utility's failure to prepare and submit the filings. If the commission finds the investor-owned transmission and distribution utility unreasonably delayed or failed to prepare and submit the filings, or failed to prosecute and pursue federal regulatory approvals of the transfer in good faith, the commission shall direct the utility to do so by a date certain and may order other remedies, including deducting the cost of preparing and submitting such regulatory filings from the purchase price or otherwise preventing the utility from recouping the cost and requiring the utility to pay for costs to other parties caused by the delay.

If at any time during the process prescribed in this subsection the company and either of the investor-owned transmission and distribution utilities reach an agreement on the purchase price of all utility facilities and utility property in the State owned or operated or held for future use by that investor-owned transmission and distribution utility, the sale may be finalized in accordance with that agreement.

The commission shall impose such conditions on the acquisition of all utility facilities and utility property in the State owned or operated or held for future use by any investor-owned transmission and distribution utility as it determines are necessary to protect the public

interest during the period between the effective date of this chapter and the date on which ownership and control are fully assumed by the company and the operations team. The commission shall take all necessary actions to ensure that the investor-owned transmission and distribution utilities and their owners cooperate fully, promptly and cost-effectively with the company during the transition in ownership and control. The commission may allow recovery by or reimbursement to the utility of necessary expenses associated with the transition. At a minimum, the utility must be required to plan, construct, operate and maintain facilities and to cooperate with customers, generators and other stakeholders to the same extent that the commission would require of any transmission and distribution utility and to provide the company such information as may be necessary to meet its responsibilities under this Title, including but not limited to a detailed inventory of assets.

7. Existing obligations. All existing agreements, obligations and contracts, including but not limited to long-term contract obligations and net energy billing agreements of an investor-owned transmission and distribution utility, must be transferred to the company and any counterparty to an agreement, obligation or contract shall accept the assignment of the investor-owned transmission and distribution utility to the company.

8. Regional transmission. The service territories of the company initially remain in the transmission system to which they belonged on the effective date of this chapter until changed by majority vote of the board.

9. Names. The company may adopt one or more alternative or regional names to distinguish its service territories or for any other purpose.

10. Rules. The company may adopt rules pursuant to Title 5, chapter 375, subchapter 2-A for establishing and administering the company and carrying out its duties. Rules adopted pursuant to this subsection are major substantive rules as defined in Title 5, chapter 375, subchapter 2-A.

11. Bylaws. The company shall adopt bylaws, through the board, consistent with this section for the governance of its affairs.

12. Consumer-owned transmission and distribution utilities; application. This subsection controls the treatment of consumer-owned transmission and distribution utilities and the application of law to the company.

A. This chapter may not be construed to affect the powers, authorities or responsibilities of any consumer-owned transmission and distribution utility other than the company created under this chapter. The company may not oppose the extension of the service territory of a consumer-owned transmission and distribution utility existing prior to the effective date of this chapter to include the entirety of a municipality in which the consumer-owned transmission and distribution utility provides electric service as long as the company is reasonably compensated for the assets and appurtenances required.

B. Notwithstanding any other provision of this chapter or any other provision of law to the contrary, the company is subject to section 310; section 3104; section 3132, subsection 2-D; sections 3132A, 3132-B, 3132-C and 3132-D; section 3144; section 3210-C, subsections 3, 7 and 11; sections 3212 and 3212-B; and section 3214, subsection 2A.

13. Board staff; initial activities. The board shall hire qualified and professional staff, including but not limited to a director or manager, chief financial officer, support staff and legal counsel. Assistance and counsel may be provided to the board by the Office of the Treasurer of State, the Office of the Attorney General, the Maine Municipal Bond Bank, the Finance Authority of Maine, the commission, the Office of the Public Advocate and any other state entity. All initial activities and expenditures of the board prior to the final acquisition of utility facilities and utility property must be funded by short-term debt of the company, to be retired in the initial financing and acquisition of the investor-owned transmission and distribution utility facilities and utility property. Notwithstanding any provision of the law to the contrary, debt incurred by the board for its initial activities and expenditures is presumed to be prudently incurred on behalf of the customers of the investor-owned transmission and distribution utilities and is recoverable in rates, except where proven to be imprudent beyond a reasonable doubt. To the extent that the company's initial activities are specifically attributable to one but not both acquired utilities, those separately attributable costs must be recovered from ratepayers of the utility to which they are attributable.

§4004. Cost-of-service rates

The rates and all other charges of the company must be sufficient to pay in full the cost of service, including the cost of debt and property taxation.

§4005. No use of state funds or tax dollars

Debt or liability of the company is not a general obligation or moral obligation of the State or any agency or instrumentality of the State other than the company, and neither the State nor any agency or instrumentality of the State other than the company guarantees any debt or liability of the company.

§4006. No debt or liability of the State

The company serves a public purpose in the carrying out of the provisions of this chapter, but debt or liability of the company is not a general obligation or moral obligation of the State.

§4007. Voter approval

Notwithstanding any other provision of law enacted on or before the date upon which this chapter is enacted, if this chapter is approved by voters of the State at a statewide election, debt or liability of the company is not subject to additional voter approval.

§4008. Property and income tax status

1. Property tax. Notwithstanding Title 36, chapter 105, subchapter 4, the company is subject to property taxation pursuant to the laws of the State and must pay property tax in the same manner as an investor-owned transmission and distribution utility. Rates charged by the company must include sufficient amounts to pay property taxes due under this subsection.

2. Income tax. Notwithstanding any provision of law to the contrary, income of the company is exempt from all taxation or assessment by the State or any political subdivision of the State. All bonds, notes and other evidences of indebtedness issued by the company in accordance with chapter 9 are legal obligations of the company, and the company is a quasi-municipal corporation within the meaning and for the purposes of Title 30-A, section

5701. All bonds, notes and other evidences of indebtedness issued by the company are legal investments for savings banks in this State and are exempt from state income tax.

3. Tax increment financing agreements. If an investor-owned transmission and distribution utility acquired by the company is subject to a tax increment financing agreement under Title 30-A, chapter 206, the company acquires the same rights and responsibilities as applied to the investor-owned transmission and distribution utility under the agreement.

§4009. Termination of the company

The company may not be dissolved or cease operations except by authorization of law and only if all debt and liabilities of the company have been paid or a sufficient amount for the payment of all debt and liabilities has been placed in an irrevocable trust for the benefit of the holders of the debt and only if any remaining equity of the company is returned in an equitable manner to the customers of the company.

§4010. Freedom of access; confidentiality

The proceedings and records of the company are subject to the freedom of access laws, Title 1, chapter 13, except as specifically provided in this section.

1. Confidential records. The following records are designated as confidential for purposes of Title 1, section 402, subsection 3, paragraph A:

A. A record obtained or developed by the company that a person, including the company, to whom the record belongs or pertains has requested be designated confidential and that the company has determined contains information that gives the owner or a user an opportunity to obtain a business or competitive advantage over another person that does not have access to the information, except through the company's records, or access to which by others would result in a business or competitive disadvantage, loss of business or other significant detriment to any person to whom the record belongs or pertains; and

B. A record that contains usage or other nonpublic information regarding a customer of a transmission and distribution utility in the State.

The company shall provide to a legislative committee, on written request signed by the chairs of that committee, any information or records, including information designated confidential under this subsection, specified in the written request. The information or records may be used only for the lawful purposes of the committee and in any action arising out of any investigation conducted by the committee, subject to protective order.

2. Exceptions. Notwithstanding subsection 1, the following are not confidential and are public records:

A. Any otherwise confidential information the confidentiality of which the company determines to have been satisfactorily and effectively waived;

B. Any otherwise confidential information that has already lawfully been made available to the public; and

C. Impersonal, statistical or general information.

3. Disclosure prohibited; further exceptions. A board member, employee, agent, other representative of the company or other person may not knowingly divulge or disclose

records designated confidential by this section, except that the company, in its discretion and in conformity with legislative freedom of access criteria in Title 1, chapter 13, subchapter 1-A, may make or authorize any of the following disclosures of information:

- A. If necessary in connection with processing any application for, obtaining or maintaining financial assistance for any person;
- B. To a financing institution or credit reporting service;
- C. Information necessary to comply with any federal or state law, regulation or rule or with any agreement pertaining to financial assistance;
- D. If necessary to ensure collection of any obligation in which the company has or may have an interest;
- E. In any litigation or proceeding in which the company has appeared, introduction for the record of any information obtained from records designated confidential by this section; and
- F. Pursuant to a subpoena, request for production of documents, warrant or other order, as long as the order appears to have first been served on the person to whom the confidential information sought pertains or belongs and as long as the order appears on its face or otherwise to have been issued or made lawfully.

§4011. Annual report

By April 15th of each year, beginning no more than one year after the first meeting of the board, the company shall submit a report to the joint standing committee of the Legislature having jurisdiction over energy and utilities matters summarizing the activities and performance of the company in meeting its obligations to its customer-owners and its responsibilities under sections 4002 and 4003 during the preceding calendar year and its plans for the current year and subsequent 5 years. Each annual report must describe in detail how the company's decisions, operations and use of low-cost financing have supported and will support the State's progress toward the climate action plan goals established in Title 38, chapter 3-A and how such financing has affected and will affect job creation and gross state product.

§4012. Initial 5-year plan

Within 18 months of the date in which the company and the operations team fully take ownership and control of all utility facilities in the State owned or operated or held for future use by any investor-owned transmission and distribution utility, the company shall submit to the commission for approval a 5-year plan to meet initial affordability, reliability, decarbonization and connectivity goals.

1. Plan minimum requirements. At a minimum, the 5-year plan under this section must also include a program to:

- A. Establish lower rates for low-income residential customers;
- B. Build across the State accessible, rapid charging infrastructure for electric vehicles;
- C. Reduce make-ready and pole attachment costs for open-access fiber-optic cable in unserved and underserved areas of the State as defined in section 9202, subsection 5; and

D. Make rapid investments in the distribution network to upgrade reliability and to improve capacity for interconnections of new renewable generation and storage facilities.

Sec. 13. Review of laws and report. The Public Utilities Commission shall examine all laws that may be affected by this Act or need to be changed as a result of this Act, including laws governing the Pine Tree Power Company as established under the Maine Revised Statutes, Title 35-A, section 4002, and laws relating to investor-owned transmission and distribution utilities that may be eliminated as a result of this Act. The commission shall determine any modifications to laws that may be necessary or appropriate as a result of this Act or to effectuate the purposes of this Act and shall submit proposed legislation to the joint standing committee of the Legislature having jurisdiction over energy, utilities and technology matters no later than 6 months after the first meeting of the Pine Tree Power Company Board under Title 35-A, section 4002. The joint standing committee of the Legislature having jurisdiction over energy, utilities and technology matters may report out a bill relating to the subject matter of this Act and to the commission's report.

Sec. 14. Staggered terms of initial members of Pine Tree Power Company Board. Notwithstanding the Maine Revised Statutes, Title 35-A, section 4002, subsection 3, the terms of the initial members of the Pine Tree Power Company Board must be staggered as provided in this section.

1. The initial designated members of the board serve as follows, determined by lot by those members after their selection: 2 members serve 6-year terms, 2 members serve 4-year terms and 2 members serve 2-year terms.

2. The initial elected members of the board serve as follows, determined by lot by those members after their election: 3 members serve 6-year terms, 2 members serve 4-year terms and 2 members serve 2-year terms.

Sec. 15. Code of ethics; recommendations. On or before February 15, 2024, the Office of the Attorney General shall submit to the joint standing committee of the Legislature having jurisdiction over state and local government matters recommendations regarding the establishment of a code of ethics applicable to the members of the Pine Tree Power Company Board, as established in the Maine Revised Statutes, Title 5, section 12004-G, subsection 36. After receiving the recommendations, the joint standing committee may report out a bill related to those recommendations to the Second Regular Session of the 131st Legislature.

Sec. 16. Effective date. That section of this Act that enacts the Maine Revised Statutes, Title 35-A, section 1511-A takes effect January 1, 2025.

SUMMARY

This initiated bill creates the Pine Tree Power Company, a privately-operated, nonprofit, consumer-owned utility controlled by a board the majority of the members of which are elected. The company's purposes are to provide for its customer-owners in this State reliable, affordable electric transmission and distribution services and to help the State meet its climate, energy and connectivity goals in the most rapid and affordable manner possible.

The Pine Tree Power Company is not permitted to use general obligation bonds or tax dollars of the State. The company finances itself by issuing debt against its future revenues to purchase the facilities of investor-owned electric transmission and distribution utilities in the State. The fair market value of the acquisition is either negotiated or determined by a refereed process. The Pine Tree Power Company Board contracts a nongovernmental team to operate the facilities, and the operations team is required to retain all workers of the purchased utilities.

The company is subject to property taxation and must pay property tax in the same manner as an investor-owned transmission and distribution utility. The company is subject to ratemaking and other oversight by the Public Utilities Commission and is required to administer programs for net energy billing, nonwires alternatives, supply procurement and low-income assistance programs.

The company is governed by a board of 13 members, 7 of whom are each elected to represent 5 State Senate districts, as well as 6 designated expert members. The board is subject to freedom of access laws and to laws preventing conflicts of interest.

The initiated bill also directs the Public Utilities Commission beginning January 1, 2025 to find a transmission and distribution utility unfit to serve and to direct the sale of the utility if the utility meets certain criteria.

**STATE OF MAINE
APPLICATION FOR CITIZEN INITIATIVE**

RECEIVED

AUG 16 2021

OFFICE OF SECRETARY OF STATE
AUGUSTA, MAINE

APPLICANT INFORMATION: (List the contact person for the initiative proponents.)

Name of Applicant: Wayne R. Jortner
Mailing Address: 11 Fox Hill Rd, Freeport, ME 04032
Municipality of Residence: _____
Home Phone: 603 454 571 Work Phone: _____ FAX: _____
selathard421@gmail.com

I hereby invoke the citizen initiative procedure provided for by the Constitution of Maine, Article IV, Part Third and governed by Title 21-A M.R.S.A. Chapter 11. Attached is a draft of the legislation for consideration under these provisions.

Wayne R. Jortner
Signature of Applicant

Subscribed and sworn before me on

August 13, 2021
(Date)

[Signature]
(Signature of Notary Public or Agent of the Secretary of State)

Alexander C. Dupras
Notary Public, State of Maine
My Commission Expires 03/22/2028

Alexander Dupras
(Print Name of Notary Public or Agent of the Secretary of State)

DESIGNATED VOTER INFORMATION: (List five voters, other than the applicant, to receive notices of proceedings.) Please list voter's name, as it appears on the voting list, the mailing address, telephone number, (if published), the municipality of legal residence (where registered to vote), and voter's signature.

1. Ania Wright
6 Jordan Pl
Bar Harbor, ME 04609
Phone: 207-274-9265
Municipality of Residence: Bar Harbor
Signature: [Signature]

2. John P. Clark
2136 LINNEUS MAINE 0470
Phone: 207-532-2806
Municipality of Residence: Linneus
Signature: [Signature]

3. Nicole Grohoski
151 Bangor Rd
Ellsworth, ME 04605
Phone: 207-358-8333
Municipality of Residence: Ellsworth
Signature: [Signature]

4. William H. Dene, Jr.
10 Sunset Point Road
YAKHOOTH, ME 04096
Phone: (207) 847-9342
Municipality of Residence: YAKHOOTH
Signature: [Signature]

5. Richard A. Bennett
75 Bennett Ln.
Oxford, ME 04270
Phone: 207-592-3200
Municipality of Residence: Oxford
Signature: [Signature]

An Act To Create the Pine Tree Power Company, a Not-for-Profit Utility, To Deliver Lower Rates, Reliability and Local Control for Maine Energy Independence

An Act to Create the Pine Tree Power Company, a Not-for-Profit Utility, To Deliver Lower Rates, Reliability and Local Control for Maine Energy Independence

RECEIVED

AUG 16 2021

Be it enacted by the People of the State of Maine as follows:

Sec. 1. 5 MRSA §12004-G, sub-§36 is enacted to read:

OFFICE OF SECRETARY OF STATE
AUGUSTA, MAINE

36.

P u b l i c Pine Tree Power Company Board
Utilities

\$110/Day and 35-A MRSA
Expenses \$4002

Sec. 2. 21-A MRSA §354, sub-§5, ¶G, as enacted by PL 1985, c. 161, §6, is amended to read:

G. For a candidate for State Representative, at least 50 and not more than 80 voters; and

Sec. 3. 21-A MRSA §354, sub-§5, ¶H, as enacted by PL 1985, c. 161, §6, is amended to read:

H. For a candidate for county charter commission member, at least 50 and not more than 80 voters;
and

Sec. 4. 21-A MRSA §354, sub-§5, ¶I is enacted to read:

I. For a candidate for member of the Pine Tree Power Company Board under Title 35A, section 4002, subsection 2, paragraph A, at least 300 and not more than 400 voters.

Sec. 5. 21-A MRSA §1011, first ¶, as amended by PL 2013, c. 334, §2, is further amended to read:

This subchapter applies to candidates for all state and county offices and to campaigns for their nomination and election. Candidates for municipal office as described in Title 30-A, section 2502, subsection 1 and candidates for the Pine Tree Power Company Board as described in Title 35-A, section 4002 are also governed by this subchapter. The commission does not have jurisdiction over financial activities to influence the nomination or election of candidates for federal office.

Sec. 6. 35-A MRSA §1511-A is enacted to read:

§1511-A. Fitness to serve

The commission shall find a transmission and distribution utility with 50,000 or more customers unfit to serve and shall require and ensure the sale of the utility to be completed within 24 months, if 4 or more of the following statements are true of the utility:

1. Customer satisfaction. Has been rated for two or more of the past five years among the lowest decile of utilities of a similar size for customer satisfaction on a nationally recognized survey of U.S. utility business or residential customers;

2. Reliability. Has been found by the commission or by the U.S. Energy Information Administration for two or more of the past five years to have overall reliability in terms of outage minutes per year, with or without major event days, in the lowest decile of utilities of a similar size in the country;

3. Affordability. Charged residential delivery rates for two or more of the past five years in the highest decile among utilities of a similar size in the country, based on data from the U.S. Energy Information Administration and based on the commission's analysis of average delivery rates as a proportion of the average total bill for integrated utilities;

4. Workers. Has within the previous year contracted with a business to perform work valued at more than \$100,000 that could reasonably have been performed by qualified, nonexempt employees of the utility;

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5. Security. Owns critical infrastructure vital to the security and welfare of the state and is presently owned, either wholly or in a part greater than 5 percent, by a government that does not represent or govern the captive customers of the utility;

6. Incentives. Due to its corporate structure, requires that customers pay for the cost of the utility's corporate taxes, and also pay for shareholder profits exceeding 10% on prudent capital investment in transmission infrastructure, with little to no risk for poor performance;

7. Disaster assistance. Due to its corporate structure, may require that customers pay directly or indirectly for 90 percent or more of damages to the company's assets caused by extreme weather events, and may also deny the utility access to federal emergency management assistance to reduce or eliminate these costs, which would otherwise be paid by customers; or

8. Priorities. Due to its corporate structure and fiduciary obligations, is unable to place the needs of customers, workers, or the state's climate and connectivity goals ahead of the desires of shareholders to earn a profit.

Sec. 7. 35-A MRSA §3501, sub-§1, ¶D, as amended by PL 2019, c. 311, §2, is further amended to read:

D. The portion of any municipal or quasi-municipal entity located in the State providing transmission and distribution services; and

Sec. 8. 35-A MRSA §3501, sub-§1, ¶E, as amended by PL 2019, c. 311, §2, is further amended to read:

E. Any transmission and distribution utility wholly owned by a municipality located in the State; and

Sec. 9. 35-A MRSA §3501, sub-§1, ¶F is enacted to read:

F. The Pine Tree Power Company established in chapter 40.

Sec. 10. 35-A MRSA §3502, first ¶, as amended by PL 1999, c. 398, Pt. A, §86 and affected by §§104 and 105, is further amended to read:

Notwithstanding section 310, any consumer-owned transmission and distribution utility, except for the Pine Tree Power Company established in chapter 40, that proposes to increase rates, tolls or charges by not more than 15% of the utility's annual operating revenues or proposes to decrease rates, tolls or charges in any amount may elect to set rates pursuant to this section and section 3503.

Sec. 11. 35-A MRSA c. 40 is enacted to read:

CHAPTER 40

PINE TREE POWER COMPANY

§4001. Definitions

As used in this chapter, unless the context otherwise indicates, the following terms have the following meanings.

1. Acquired utility. "Acquired utility" means an investor-owned transmission and distribution utility whose facilities or property are purchased or intended for purchase pursuant to this chapter.

2. Board. "Board" means the Pine Tree Power Company Board established in Title 5, section 12004G, subsection 36.

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3. Company. "Company" means the Pine Tree Power Company established in section 4002.

4. Cost of service. "Cost of service" means the total amount that must be collected by the company to recover its costs but does not include any return on capital investment unless a return is required as security for debt service.

5. Customer-owner. "Customerowner" means a person to whom the company provides electricity.

6. Generating source. "Generating source" means a machine or device that produces electric energy by any means.

7. Utility facility. "Utility facility" means any portion of a plant used or useful in providing transmission and distribution utility service and includes, but is not limited to, transmission lines, office buildings, equipment and transportation equipment.

8. Utility property. "Utility property" means any tangible or intangible asset, liability, obligation, plan, proposal, share, agreement or interest of a utility; any facility in development or planning by the utility as of January 1, 2020; and, without limitation, the entire utility and any part or portion of the utility.

§4002. Pine Tree Power Company established; purpose

The Pine Tree Power Company is established to provide for its customerowners in this State reliable, affordable electric transmission and distribution services in accordance with this chapter.

1. Company purposes. The company shall use its access to low-cost capital and its ability to manage the electric transmission and distribution system in a manner that is not focused on ensuring shareholder profits for the following purposes:

A. To deliver electricity to the company's customer-owners in a safe, affordable and reliable manner;

B. To ensure excellence, timeliness and accuracy in billing, metering and customer service;

C. To provide an open, supportive and competitive platform to develop and deploy renewable generation, storage, efficiency and beneficial electrification technologies;

D. To assist the State in rapidly meeting or exceeding the climate action plan goals established in Title 38, chapter 3-A;

E. To improve the State's Internet connectivity through more affordable access to utility poles and other infrastructure in unserved or underserved areas of the State, as defined in section 9202, subsection 5;

F. To advance economic, environmental and social justice and to benefit company workers and all communities in the State;

G. To provide for transparent and accountable governance; and

H. To support, secure and sustain economic growth and benefits for the State.

2. Governance; board. The company is created as a body corporate and politic and is governed by the Pine Tree Power Company Board in accordance with this section.

The board is composed of 13 voting members, 7 of whom are elected members and 6 of whom are designated members chosen by the elected members. All members must be residents of the State.

A. As of the last date for filing a nomination petition under Title 21-A, section 354, each of the 7 elected members must be a legal citizen of the United States for at least 5 years, must be at least 21 years of age, must be a legal Maine resident for at least one year, must be a resident of the area the member

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represents as provided in this paragraph for at least 3 months and may not hold a state elected office. Each elected member represents 5 of the State's 35 State Senate districts, as set out in Title 21-A, section 1203-B, as follows:

- (1) One member represents State Senate districts 1 to 5;
- (2) One member represents State Senate districts 6 to 10;
- (3) One member represents State Senate districts 11 to 15;
- (4) One member represents State Senate districts 16 to 20;
- (5) One member represents State Senate districts 21 to 25;
- (6) One member represents State Senate districts 26 to 30; and
- (7) One member represents State Senate districts 31 to 35.

If during an elected member's term the member's place of residence as a result of reapportionment is no longer included in the area the member was elected to represent, the member may continue to serve the remainder of the term.

B. The 6 designated members must be selected by the elected members. The designated members must collectively possess expertise and experience across the following 6 areas:

- (1) Utility law, management, planning, operations, regulation or finance;
- (2) The concerns of utility employees and other workers;
- (3) The concerns of commercial or industrial electricity consumers;
- (4) Electricity generation, storage, efficiency, delivery, cybersecurity, connectivity, or related technologies;
- (5) Planning, climate mitigation, adaptation, or the environment; and
- (6) Economic, environmental, and social justice, including the needs of low and moderate-income people.

C. Candidates for election to the board pursuant to paragraph A are eligible for funding through the Maine Clean Election Act, in amounts and under terms commensurate with those for candidates for the State Senate. The Commission on Governmental Ethics and Election Practices, established pursuant to Title 5, section 12004-G, subsection 33, shall adopt rules to implement this paragraph. Rules must include, at a minimum, the procedures for qualifying and certification and for allocation of distributions from the fund and other provisions necessary to ensure consistency with the provisions of the Maine Clean Election Act. Rules adopted pursuant to this paragraph are major substantive rules as defined in Title 5, chapter 375, subchapter 2-A.

D. Candidates for election to the board pursuant to paragraph A are subject to the requirements of Title 21-A, chapter 13.

E. The nomination of candidates for elected members of the board is governed by Title 21-A, chapter 5, subchapter 2, and the determination of the election is governed by Title 21-A, section 723-A. The Secretary of State may adopt rules governing the election of members of the board and shall consult with the commission in developing the rules. Rules adopted under this paragraph are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A.

3. Term of office. An elected member of the board serves for a term of 6 years and a designated member of the board serves for a term of 6 years. An elected member serves from January 1st to December 31st and a designated member serves from March 1st to the end of February. A majority of members shall declare a vacancy on the board upon the resignation, death or incapacitation of an elected

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member, in the event that a member is absent without leave of the chair for at least half of all board meetings held in a 180-day period or in the event of a member's gross and continual neglect of duty. If there is a vacancy on the board of a designated member, it must be filled within 180 days in the same manner as described in subsection 2, paragraph B, and the person selected to fill a vacancy serves for the unexpired term of the member whose vacancy the person is filling. If there is a vacancy on the board of an elected member, the board shall notify the Secretary of State, who shall establish a deadline of no sooner than 60 days after being notified of the vacancy to accept nomination petitions for a special election. A special election must be held within 180 days of notification of the vacancy and declared in the manner prescribed by Title 21-A, section 366. The person elected to fill a vacancy serves for the unexpired term of the member whose vacancy the person is filling. Designated members may be reselected and elected members may be reelected.

4. Quorum and chair. Seven members of the board constitute a quorum. The board shall elect from its members a chair and a vice-chair. The vice-chair shall serve as acting chair in the absence of the chair.

5. Voting. Except as otherwise provided in this Title, all decisions of the board must be made by a majority vote of the members present. Whenever possible, the board shall attempt to achieve consensus among members.

6. Bylaws; due diligence. Prior to making a purchase price offer for any utility facility or utility property, the board shall adopt bylaws, retain expert professional staff and consultants, secure initial financing, conduct due diligence as it considers necessary and develop a transition plan and a business plan for the company.

7. Board review. Four years after the first meeting of the board, the board shall review the effectiveness of the company governance structure and shall report to the joint standing committee of the Legislature having jurisdiction over energy and utilities matters the outcome of this review. The report may suggest necessary changes to the governance structure of the company. The committee may report out legislation pertaining to the recommendations in the report.

§4003. Powers and duties: acquisition of utility facilities and utility property

1. Powers; generally. The company is a consumer-owned transmission and distribution utility and has all the powers and duties of a transmission and distribution utility under this Title, as affected by the provisions of chapter 35, within the service territories of the investor-owned transmission and distribution utilities whose utility facilities it acquires under this chapter.

2. Limits on company; generating property. The company may not own or operate a generating source or purchase electric capacity or energy from a generating source, except as the commission may approve in order to allow the company to maintain or improve system reliability.

3. Private sector, competitive, performance-based operations. The company shall contract by means of a competitive public solicitation the services of at least one qualified nongovernmental entity, referred to in this chapter as "the operator," or "the operations team," to provide cost-effective, private-sector operations, maintenance, customer accounts management and customer service and information and to assist as necessary in regulatory affairs, capital planning and administrative services. The company may not contract with an operator that has managed a company found to be unfit within the previous ten years. The company may contract with separate operators for each of the service territories of the acquired utilities, or to meet discrete operations, maintenance or other requirements. In requesting and evaluating bids pursuant to this section, the board shall consider anticipated costs; professional, operational and managerial experience; familiarity with the systems to be administered; and ability to improve customer service and employee morale. The company may establish additional criteria for its solicitation and shall determine the period and the specific terms of each operations contract. The commission shall review and approve, reject or approve with conditions any contract between the company and an operator before it takes effect. A contract with an operations team must reward proven performance, not the provision of

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capital, and must provide for the efficient and effective fulfillment of the company's purposes under Title 35-A, §4002.

4. Retention of employees. The operator shall hire any person who was an employee of the acquired utility at the time the company acquired the utility facilities who is a qualified, nonexempt employee subject to collective bargaining agreements of the acquired utility, and may hire any other person who was an employee of the acquired utility with the exception of those employees on the executive board of the acquired utility. To ensure continuity and an experienced local workforce, the operations team shall offer to these employees a retention bonus of 8% of annual gross pay for the first year of work and 6% of annual gross pay for the 2nd year of work. This bonus must be payable on the earlier of the anniversary of the date of hire by the operator and the date of a termination of employment that occurs following the date of hire, as long as the termination is due to the employee's death or disability, by the employer without cause or by the employee for good reason. The operations team shall maximize opportunities for internal promotion, additional staffing and on-the-job training for all employees and may not contract with other businesses to perform work that could reasonably have been performed by qualified, nonexempt employees of the operations team.

5. Rights of employees. The employees of the operations team retained to operate the company's facilities are private employees. Notwithstanding any other provision of law, the company shall at a minimum accord all qualified, nonexempt employees and their representatives the same rights as would an investor-owned transmission and distribution utility. The operator may not limit or impair the ability and right of its workers to strike or to engage in any work stoppage or slowdown, and may not hire replacement workers permanently during a worker strike. The operator shall notify worker representatives of new hires, and shall allow representatives of workers reasonable access to work sites during work hours. The operator shall assume all retirement benefit obligations to the workers of and retirees of an acquired utility, unless these obligations have remained with the acquired utility, its corporate parent or a pension plan trust regulated by the federal Employee Retirement Income Security Act of 1974. The operator shall honor and maintain the terms of any collective bargaining agreements in effect at the time the company acquired the investor-owned transmission and distribution utility for the remaining term of any collective bargaining agreement, except that, when 2 or more contracts exist, the employees' wages, salaries and benefits must be made reasonably equal to the higher of those provided in the contracts or must exceed those previously paid by the acquired utility.

Upon the conclusion of a contract pursuant to subsection 3, the company, in soliciting for a new contract, shall give preference to service providers who agree to maintain or improve the terms of the collective bargaining agreement in existence on the conclusion of the prior contract.

6. Acquisition of utility facilities and utility property. Notwithstanding any other provision of this Title, rules adopted under this Title or any other applicable law to the contrary, the company shall purchase or acquire by the exercise of the right of eminent domain all utility facilities in the State owned or operated or held for future use by any investor-owned transmission and distribution utility, in accordance with this subsection, and may also purchase or acquire by the exercise of the right of eminent domain in accordance with this subsection any other investor-owned transmission and distribution utility property should the board determine such an acquisition to be in the interest of its customer-owners. The company shall finance the purchase or acquisition of utility facilities or utility property under this subsection by issuing debt in accordance with chapter 9. The board may not purchase or acquire by the right of eminent domain any utility facilities or utility property under this subsection until 12 months after the effective date of this chapter or 6 months after the first meeting of the board, whichever is later.

A. Within 18 months after the effective date of this chapter or 12 months after the first meeting of the board, whichever is later, unless further delayed to a date certain by a vote of at least 9 members of the board, the company shall:

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(1) Identify the utility facilities and any other utility property in the State owned or operated or held for future use by any investor-owned transmission and distribution utility to be purchased by the company;

(2) Determine a purchase price offer to be made for the utility facilities and other utility property. The purchase price offer must include compensation for the cost of preparing and submitting necessary regulatory filings, including but not limited to those required by the federal Department of Energy, Federal Energy Regulatory Commission; and

(3) Deliver notice of the purchase price offer, including detailed description of the utility facilities and other utility property to be purchased, to the investor-owned transmission and distribution utility that owns, operates or holds for future use the subject utility facilities and utility property.

By a vote of at least 9 members of the board, the company may delay the purchase of the utility facilities and any other utility property of one of the 2 investor-owned transmission and distribution utilities in the State and proceed with the purchase of the utility facilities and any other utility property of the other investor-owned transmission and distribution utility in the State.

B. After the receipt of a notice of the purchase price offer under paragraph A, subparagraph (3), the investor-owned transmission and distribution utility may, within 30 days of the date of receipt, submit a counteroffer to the company. If the company rejects the counteroffer, within 30 days of the date of receipt of the rejection the investor-owned transmission and distribution utility may petition the Superior Court of Kennebec County to determine and order an alternative purchase price for the subject utility facilities or utility property in accordance with this paragraph. The purchase price determined by the court must include compensation for the cost of preparing and submitting necessary regulatory filings, including but not limited to those required by the federal Department of Energy, Federal Energy Regulatory Commission. After the filing of a petition by an investor-owned transmission and distribution utility under this paragraph, the Superior Court, as expeditiously as possible, shall:

(1) Select, in consultation with the company and the petitioner, a referee or referees with relevant expertise and capabilities to determine a recommended purchase price for the utility facilities and utility property;

(2) Complete a trial or hearing, as appropriate, for the presentation of evidence to referees, who shall submit a recommended purchase price to the court; and

(3) Render a decision and, based upon the recommended purchase price submitted under subparagraph (2) and any other information available to the court, order a purchase price to be paid by the company to the petitioner for possession and ownership of the subject utility facilities and utility property.

The decision of the Superior Court under this paragraph is appealable to the Law Court as in any civil action.

C. The taking of utility facilities and utility property by the company is governed by this paragraph.

(1) Notwithstanding any law to the contrary, if a petition is filed under paragraph B, the company may, after any appeals are resolved, take the subject utility facilities and utility property identified in paragraph A by eminent domain at the final price rendered by the court, in the same manner and under the same conditions as set forth in chapter 65.

(2) Notwithstanding any law to the contrary, if a petition is not filed under paragraph B, the company may take the subject utility facilities and utility property identified in paragraph A by eminent domain at the purchase price offer, in the same manner and under the same conditions as set forth in chapter 65.

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Within 45 days of the date upon which the purchase price is either mutually agreed upon by the company and the investor-owned transmission and distribution utility or is finally determined through the judicial process set forth under paragraph B, the investor-owned transmission and distribution utility shall prepare and submit any regulatory filings necessary to the transfer of subject utility facilities and utility property, including but not limited to those required by the federal Department of Energy, Federal Energy Regulatory Commission. If the investor-owned transmission and distribution utility does not prepare and submit such filings within 45 days, the company may request that the commission investigate the utility's failure to prepare and submit the filings. Upon such a request from the company, the commission shall, in a timely manner, investigate the utility's failure to prepare and submit the filings. If the commission finds the investor-owned transmission and distribution utility unreasonably delayed or failed to prepare and submit the filings, or failed to prosecute and pursue federal regulatory approvals of the transfer in good faith, the commission shall direct the utility to do so by a date certain and may order other remedies, including deducting the cost of preparing and submitting such regulatory filings from the purchase price or otherwise preventing the utility from recouping the cost.

If at any time during the process prescribed in this subsection the company and either of the investor-owned transmission and distribution utilities reach an agreement on the purchase price of all utility facilities and utility property in the State owned or operated or held for future use by that investor-owned transmission and distribution utility, the sale may be finalized in accordance with that agreement.

The commission shall impose such conditions on the acquisition of all utility facilities and utility property in the State owned or operated or held for future use by any investor-owned transmission and distribution utility as it determines are necessary to protect the public interest during the period between the effective date of this chapter and the date on which ownership and control are fully assumed by the company and the operations team. The commission shall take all necessary actions to ensure that the investor-owned transmission and distribution utilities and their owners cooperate fully and cost-effectively with the company during the transition in ownership and control. At a minimum the utility must be required to plan, construct, operate, and maintain facilities and to cooperate with customers, generators and other stakeholders to the same extent that the commission would require of any transmission and distribution utility.

7. Existing obligations. All existing agreements, obligations and contracts, including but not limited to long-term contract obligations and net energy billing agreements of a investor-owned transmission and distribution utility, must be transferred to the company and any counterparty to an agreement, obligation or contract shall accept the assignment of the investor-owned transmission and distribution utility to the company.

8. Regional transmission. The service territories of the company initially remain in the transmission system to which they belonged on the effective date of this chapter until changed by majority vote of the board.

9. Names. The company may adopt one or more alternative or regional names to distinguish its service territories or for any other purpose.

10. Rules. The company may adopt rules pursuant to Title 5, chapter 375, subchapter 2-A for establishing and administering the company and carrying out its duties. Rules adopted pursuant to this subsection are major substantive rules as defined in Title 5, chapter 375, subchapter 2-A.

11. Bylaws. The company shall adopt bylaws, through the board, consistent with this section for the governance of its affairs.

12. Consumer-owned transmission and distribution utilities: application. This subsection controls the treatment of consumer-owned transmission and distribution utilities and the application of law to the company.

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A. This chapter may not be construed to affect the powers, authorities or responsibilities of any consumer-owned transmission and distribution utility other than the company created under this chapter. The company may not oppose the extension of the service territory of a consumer-owned transmission and distribution utility existing prior to the effective date of this chapter to include the entirety of a municipality in which the consumer-owned transmission and distribution utility provides electric service as long as the company is reasonably compensated for the assets and appurtenances required.

B. Notwithstanding any other provision of this chapter or any other provision of law to the contrary, the company is subject to section 310; section 3104; section 3132, subsection 2-D; sections 3132-A, 3132-B, 3132-C and 3132-D; section 3144; section 3210-C, subsections 3, 7 and 11; sections 3212 and 3212-B; and section 3214, subsection 2A.

13. Board staff: initial activities. The board shall hire qualified and professional staff, including but not limited to a director or manager, chief financial officer, support staff and legal counsel. Assistance and counsel may be provided to the board by the Office of the Treasurer of State, the Office of the Attorney General, the Maine Municipal Bond Bank, the Finance Authority of Maine, the commission, the Office of the Public Advocate and any other state entity. All initial activities and expenditures of the board prior to the final acquisition of utility facilities and utility property must be funded by short-term debt of the company, to be retired in the initial financing and acquisition of the investor-owned transmission and distribution utility facilities and utility property. Notwithstanding any provision of the law to the contrary, debt incurred by the board for its initial activities and expenditures must be considered by the commission to be a just and reasonable expense incurred on behalf of the customers of the investor-owned transmission and distribution utilities and must be fully recoverable through the transmission and distribution rates charged to those customers.

§4004. Cost-of-service rates

The rates and all other charges of the company must be sufficient to pay in full the cost of service, including the cost of debt and property taxation.

§4005. No use of state funds or tax dollars

Debt or liability of the company is not a general obligation or moral obligation of the State or any agency or instrumentality of the State other than the company, and neither the State nor any agency or instrumentality of the State other than the company guarantees any debt or liability of the company.

§4006. No debt or liability of the State

The company serves a public purpose in the carrying out of the provisions of this chapter, but debt or liability of the company is not a general obligation or moral obligation of the State.

§4007. Property and income tax status

1. Property tax. Notwithstanding Title 36, chapter 105, subchapter 4, the company is subject to property taxation pursuant to the laws of the State of Maine and must pay property tax in the same manner as an investor-owned transmission and distribution utility. Rates charged by the company must include sufficient amounts to pay property taxes due under this subsection.

2. Income tax. Notwithstanding any provision of law to the contrary, income of the company is exempt from all taxation or assessment by the State or any political subdivision of the State. All bonds, notes and

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other evidences of indebtedness issued by the company in accordance with chapter 9 are legal obligations of the company, and the company is a quasi-municipal corporation within the meaning and for the purposes of Title 30-A, section 5701. All bonds, notes and other evidences of indebtedness issued by the company are legal investments for savings banks in this State and are exempt from state income tax.

3. Tax increment financing agreements. If an investor-owned transmission and distribution utility acquired by the company is subject to a tax increment financing agreement under Title 30-A, chapter 206, the company acquires the same rights and responsibilities as applied to the investor-owned transmission and distribution utility under the agreement.

§4008. Termination of the company

The company may not be dissolved or cease operations except by authorization of law and only if all debt and liabilities of the company have been paid or a sufficient amount for the payment of all debt and liabilities has been placed in an irrevocable trust for the benefit of the holders of the debt and only if any remaining equity of the company is returned in an equitable manner to the customers of the company.

§4009. Freedom of access: confidentiality

The proceedings and records of the company are subject to the freedom of access laws, Title 1, chapter 13, except as specifically provided in this section.

1. Confidential records. The following records are designated as confidential for purposes of Title 1, section 402, subsection 3, paragraph A:

A. A record obtained or developed by the company that a person, including the company, to whom the record belongs or pertains has requested be designated confidential and that the company has determined contains information that gives the owner or a user an opportunity to obtain a business or competitive advantage over another person who does not have access to the information, except through the company's records, or access to which by others would result in a business or competitive disadvantage, loss of business or other significant detriment to any person to whom the record belongs or pertains; and

B. A record that contains usage or other nonpublic information regarding a customer of a transmission and distribution utility in the State.

The company shall provide to a legislative committee, on written request signed by the chairs of that committee, any information or records, including information designated confidential under this subsection, specified in the written request. The information or records may be used only for the lawful purposes of the committee and in any action arising out of any investigation conducted by the committee, subject to protective order.

2. Exceptions. Notwithstanding subsection 1, the following are not confidential and are public records:

A. Any otherwise confidential information the confidentiality of which the company determines to have been satisfactorily and effectively waived;

B. Any otherwise confidential information that has already lawfully been made available to the public; and

C. Impersonal, statistical or general information.

3. Disclosure prohibited; further exceptions. A board member, employee, agent, other representative of the company or other person may not knowingly divulge or disclose records designated confidential by this section, except that the company, in its discretion and in conformity with legislative

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freedom of access criteria in Title 1, chapter 13, subchapter 1-A, may make or authorize any of the following disclosures of information:

- A. If necessary in connection with processing any application for, obtaining or maintaining financial assistance for any person;
- B. To a financing institution or credit reporting service;
- C. Information necessary to comply with any federal or state law, regulation or rule or with any agreement pertaining to financial assistance;
- D. If necessary to ensure collection of any obligation in which the company has or may have an interest;
- E. In any litigation or proceeding in which the company has appeared, introduction for the record of any information obtained from records designated confidential by this section; and
- F. Pursuant to a subpoena, request for production of documents, warrant or other order, as long as the order appears to have first been served on the person to whom the confidential information sought pertains or belongs and as long as the order appears on its face or otherwise to have been issued or made lawfully.

§4010. Annual report

By April 15th of each year, beginning no more than one year after the first meeting of the board, the company shall submit a report to the joint standing committee of the Legislature having jurisdiction over energy and utilities matters summarizing the activities and performance of the company in meeting its obligations to its customer-owners and its responsibilities under sections 4002 and 4003 during the preceding calendar year and its plans for the current year and subsequent 5 years. Each annual report must describe in detail how the company's decisions, operations and use of low-cost financing have supported and will support the State's progress toward the climate action plan goals established under Title 38, chapter 3-A and how such financing has affected and will affect job creation and gross state product.

§4011. Initial 5-year plan

Within 18 months of the date in which the company and the operations team fully take ownership and control of all utility facilities in the State owned or operated or held for future use by any investor-owned transmission and distribution utility, the company shall submit to the commission for approval a 5-year plan to meet initial affordability, reliability, decarbonization and connectivity goals.

1. Plan minimum requirements. At a minimum, the 5-year plan under this section must also include a program to:

- A. Establish lower rates for low-income residential customers;
- B. Build across the State accessible, rapid charging infrastructure for electric vehicles;
- C. Reduce make-ready and pole attachment costs for open-access fiber-optic cable in unserved and underserved areas of the State as defined in section 9202, subsection 5; and
- D. Make rapid investments in the distribution network to upgrade reliability and to improve capacity for interconnections of new renewable generation and storage facilities.

Sec. 12. Review of laws and report. The Public Utilities Commission shall examine all laws that may be affected by this Act or need to be changed as a result of this Act, including laws governing the Pine Tree Power Company as established under the Maine Revised Statutes, Title 35-A, section 4002, and laws relating to investorowned transmission and distribution utilities that may be eliminated as a result of this

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Act. The commission shall determine any modifications to laws that may be necessary or appropriate as a result of this Act or to effectuate the purposes of this Act and shall submit proposed legislation to the joint standing committee of the Legislature having jurisdiction over energy, utilities and technology matters no later than 6 months after the first meeting of the Pine Tree Power Company Board under Title 35-A, section 4002. The joint standing committee of the Legislature having jurisdiction over energy, utilities and technology matters may report out a bill relating to the subject matter of this Act and to the commission's report.

Sec. 13. Staggered terms of initial members of Pine Tree Power Company Board. Notwithstanding the Maine Revised Statutes, Title 35-A, section 4002, subsection 3, the terms of the initial members of the Pine Tree Power Company Board must be staggered as provided in this section.

1. The initial designated members of the board serve as follows, determined by lot by those members after their selection: 2 members serve 6-year terms, 2 members serve 4-year terms and 2 members serve 2-year terms.

2. The initial elected members of the board serve as follows, determined by lot by those members after their election: 3 members serve 6-year terms, 2 members serve 4-year terms and 2 members serve 2-year terms.

Sec. 14. Code of ethics; recommendations. On or before February 15, 2024, the Office of the Attorney General shall submit to the Joint Standing Committee on State and Local Government recommendations regarding the establishment of a code of ethics applicable to the members of the Pine Tree Power Company Board, as established in the Maine Revised Statutes, Title 5, section 12004-G, subsection 36. After receiving the recommendations, the joint standing committee may report out a bill related to those recommendations to the Second Regular Session of the 130th Legislature.

Sec. 15. Effective date. 35-A MRSA §1511-A is effective January 1, 2025.

Note: Fiscal note should assume the referendum is enacted EITHER in Nov. 2022 OR in Nov. 2023, with board elections a year later and initial PUC activities immediately after that election.

**An Act To Create the Pine Tree Power Company,
a Nonprofit, Customer-owned Utility**

Date of Issuance: October 22, 2021

Filing Deadline for the November 2022 Ballot: January 31, 2022

18 month petition expiration date: April 22, 2023

Freedom of Citizen Information: Before a registered voter signs any initiative petition, signature gatherers must offer the voter the opportunity to read the proposed initiative summary and fiscal impact statement prepared by the Secretary of State.

Summary of Proposed Initiative

This initiated bill creates the Pine Tree Power Company, a privately-operated, nonprofit, consumer-owned utility controlled by a board the majority of the members of which are elected. The company's purposes are to provide for its customer-owners in this State reliable, affordable electric transmission and distribution services and to help the State meet its climate, energy and connectivity goals in the most rapid and affordable manner possible.

The Pine Tree Power Company is not permitted to use general obligation bonds or tax dollars of the State. The company finances itself by issuing debt against its future revenues to purchase the facilities of investor-owned electric transmission and distribution utilities in the State. The fair market value of the acquisition is either negotiated or determined by a refereed process. The Pine Tree Power Company Board contracts a nongovernmental team to operate the facilities, and the operations team is required to retain all workers of the purchased utilities.

The company is subject to property taxation and must pay property tax in the same manner as an investor-owned transmission and distribution utility. The company is subject to ratemaking and other oversight by the Public Utilities Commission and is required to administer programs for net energy billing, nonwires alternatives, supply procurement and low-income assistance programs.

The company is governed by a board of 13 members, 7 of whom are each elected to represent 5 State Senate districts, as well as 6 designated expert members. The board is subject to freedom of access laws and to laws preventing conflicts of interest.

The initiated bill also directs the Public Utilities Commission beginning January 1, 2025 to find a transmission and distribution utility unfit to serve and to direct the sale of the utility if the utility meets certain criteria.

Estimate of Fiscal Impact

This citizen initiative creates the Pine Tree Power Company (PTPC), a privately operated, nonprofit, consumer-owned transmission and distribution utility. It establishes a process for the PTPC to purchase the assets of an investor-owned electric transmission and distribution facility operating in the State. The PTPC will be subject to oversight by the Public Utilities Commission (PUC) as a consumer-owned utility. It is important to clarify that this fiscal impact statement does not attempt to quantify or include the cost to the PTPC to purchase and operate a decertified utility. The purchase is anticipated to be financed through the issuance of bonds and the debt service costs of those bonds and the costs of operation will be funded through utility rates charged to the consumers.

The PUC has indicated that its additional regulatory authority will require 3 Staff Attorney positions and 6 Utility Analyst positions at a projected cost of \$1,294,169 in the first year and \$2,275,349 in subsequent years. Since the PUC is funded by an assessment set to produce sufficient revenue for the expenditures allocated by the Legislature for operating the PUC, the increased expenditures will require a corresponding increase in revenue from assessments on transmission and distribution utilities. These costs may be passed on to electric utility customers through scheduled rate cases in the future.

The initiative also requires that no earlier than January 1, 2025, the PUC shall decertify investor-owned electric transmission and distribution utilities operating in the State that fail to meet criteria established in this initiative. This action, combined with provisions designed to force the utilities subject to decertification to sell assets to the PTPC, may result in litigation. Any litigation costs may be passed on to consumers.

The 7 elected members of a 13-person governing board may participate in the Maine Clean Elections program. The Commission on Governmental Ethics and Election Practices estimates that up to 11 candidates may choose to use the program in the first election cycle after the PTPC is established for a cost to the Commission of \$335,450 from April through June in the first fiscal year and \$273,750 from July through October in the second fiscal year. Qualifying contributions from candidates are anticipated to generate additional revenue of \$13,900 in the first year and \$9,900 in the second fiscal year. Subsequent election cycles are estimated to require payments to candidates of \$110,764 or \$166,145, depending on whether 2 or 3 board members are being elected.

Additional costs to any state agencies and departments that provide assistance and counsel to the board, and to the Office of the Attorney General to make recommendations regarding a code of ethics for members of the board, can be absorbed within existing budgeted resources and will not require additional funding.

Since the PTPC will be exempt from income taxes, the State will see a decrease in General Fund revenue from the corporate income taxes that are currently paid by the investor-owned utilities currently operating in the State. However, the PTPC will still be subject to property taxes, so local units of government will still receive revenue from property taxes.

Please See Pages 2-7 for Legislation, Page 7 for Instructions, and Page 8 for Signature Lines

To the Legislature of the State of Maine:

In accordance with Section 18 of Article IV, Part Third of the Constitution of the State of Maine, the electors of the State of Maine, qualified to vote for Governor, residing in said State, whose names have been certified on this petition, hereby respectfully propose to the Legislature for its consideration the following entitled legislation: “An Act To Create the Pine Tree Power Company, a Nonprofit, Customer-owned Utility”.

Be it enacted by the People of the State of Maine as follows:

Sec. 1. 5 MRSA §12004-G, sub-§36 is enacted to read:
36.

<u>Public Utilities</u>	<u>Pine Tree Power Company Board</u>	<u>\$110/Day and Expenses</u>	<u>35-A MRSA §4002</u>
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Sec. 2. 21-A MRSA §354, sub-§5, ¶G, as enacted by PL 1985, c. 161, §6, is amended to read:

G. For a candidate for State Representative, at least 50 and not more than 80 voters; ~~and~~

Sec. 3. 21-A MRSA §354, sub-§5, ¶H, as enacted by PL 1985, c. 161, §6, is amended to read:

H. For a candidate for county charter commission member, at least 50 and not more than 80 voters; ~~and~~

Sec. 4. 21-A MRSA §354, sub-§5, ¶I is enacted to read:

I. For a candidate for member of the Pine Tree Power Company Board under Title 35A, section 4002, subsection 2, paragraph A, at least 300 and not more than 400 voters.

Sec. 5. 21-A MRSA §1011, first ¶, as amended by PL 2013, c. 334, §2, is further amended to read:

This subchapter applies to candidates for all state and county offices and to campaigns for their nomination and election. Candidates for municipal office as described in Title 30-A, section 2502, subsection 1 and candidates for the Pine Tree Power Company Board as described in Title 35-A, section 4002 are also governed by this subchapter. The commission does not have jurisdiction over financial activities to influence the nomination or election of candidates for federal office.

Sec. 6. 35-A MRSA §1511-A is enacted to read:

§1511-A. Fitness to serve

The commission shall find a transmission and distribution utility with 50,000 or more customers unfit to serve and shall require and ensure the sale of the utility, to be completed within 24 months, if 4 or more of the following statements are true of the utility:

1. Customer satisfaction. The utility has been rated for 2 or more of the past 5 years among the lowest decile of utilities of a similar size for customer satisfaction on a nationally recognized survey of United States utility business or residential customers;

2. Reliability. The utility has been found by the commission or by the United States Energy Information Administration for 2 or more of the past 5 years to have overall reliability in terms of outage minutes per year, with or without major event days, in the lowest decile of utilities of a similar size in the country;

3. Affordability. In 2 or more of the past 5 years, the utility charged residential delivery rates reasonably estimated to be in the highest decile among utilities of a similar size in the country, based on data from the United States Energy Information Administration and based on the commission's analysis of average delivery rates as a proportion of the average total bill for integrated utilities;

4. Employees. The utility has within the previous year contracted with a business to perform work valued at more than \$100,000 that could reasonably have been performed by qualified, nonexempt employees of the utility;

5. Security. The utility owns critical infrastructure vital to the security and welfare of the State and is presently owned, either wholly or in a part greater than 5%, by a government that does not represent or govern the captive customers of the utility;

6. Customer obligations. The utility, due to its corporate structure, requires that customers pay for the cost of the utility's corporate taxes, and also pay for shareholder profits exceeding 10% on prudent capital investment in transmission infrastructure, with little to no risk for poor performance;

7. Disaster assistance. The utility, due to its corporate structure, may require that customers pay directly or indirectly for 90% or more of damages to the utility's assets caused by extreme weather events, and may also deny the utility access to federal emergency management assistance to reduce or eliminate these costs; or

8. Priorities. The utility, due to its corporate structure and fiduciary obligations, is unable to place the needs of customers, workers or the State's climate and connectivity goals ahead of the desires of shareholders to earn a profit.

Sec. 7. 35-A MRSA §3501, sub-§1, ¶D, as amended by PL 2019, c. 311, §2, is further amended to read:

D. The portion of any municipal or quasi-municipal entity located in the State providing transmission and distribution services; ~~and~~

Sec. 8. 35-A MRSA §3501, sub-§1, ¶E, as amended by PL 2019, c. 311, §2, is further amended to read:

E. Any transmission and distribution utility wholly owned by a municipality located in the State; ~~and~~

Sec. 9. 35-A MRSA §3501, sub-§1, ¶F is enacted to read:

F. The Pine Tree Power Company established in chapter 40.

Sec. 10. 35-A MRSA §3502, first ¶, as amended by PL 1999, c. 398, Pt. A, §86 and affected by §§104 and 105, is further amended to read:

Notwithstanding section 310, any consumer-owned transmission and distribution utility, except for the Pine Tree Power Company established in chapter 40, that proposes to increase rates, tolls or charges by not more than 15% of the utility's annual operating revenues or proposes to decrease rates, tolls or charges in any amount may elect to set rates pursuant to this section and section 3503.

Sec. 11. 35-A MRSA §3506 is enacted to read:

§3506. Voter approval conditioned on parity

Notwithstanding any other provision of law, neither utility debt nor the incurrence of utility debt is subject to statewide voter approval, unless and until voter approval of utility debt and of the incurrence of such debt is required equally for both investor-owned and consumer-owned utilities operating in the State.

Sec. 12. 35-A MRSA c. 40 is enacted to read:

CHAPTER 40

PINE TREE POWER COMPANY

§4001. Definitions

As used in this chapter, unless the context otherwise indicates, the following terms have the following meanings.

1. Acquired utility. "Acquired utility" means an investor-owned transmission and distribution utility whose facilities or property are purchased or intended for purchase pursuant to this chapter.

2. **Board.** "Board" means the Pine Tree Power Company Board established in Title 5, section 12004G, subsection 36.

3. **Company.** "Company" means the Pine Tree Power Company established in section 4002.

4. **Cost of service.** "Cost of service" means the total amount that must be collected by the company to recover its costs but does not include any return on capital investment unless a return is required as security for debt service.

5. **Customer-owner.** "Customer-owner" means a person to whom the company provides electricity.

6. **Generating source.** "Generating source" means a machine or device that produces electric energy by any means.

7. **Utility facility.** "Utility facility" means any portion of a plant used or useful in providing transmission and distribution utility service and includes, but is not limited to, transmission lines, office buildings, equipment and transportation equipment.

8. **Utility property.** "Utility property" means any tangible or intangible asset, liability, obligation, plan, proposal, share, agreement or interest of a utility; any facility in development or planning by the utility as of January 1, 2020; and, without limitation, the entire utility and any part or portion of the utility.

§4002. Pine Tree Power Company established; purpose

The Pine Tree Power Company is established to provide for its customer-owners in this State reliable, affordable electric transmission and distribution services in accordance with this chapter.

1. **Company purposes.** The company shall use its access to low-cost capital and its ability to manage the electric transmission and distribution system in a manner that is not focused on ensuring shareholder profits for the following purposes:

- A. To deliver electricity to the company's customer-owners in a safe, affordable and reliable manner;
- B. To ensure excellence, timeliness and accuracy in billing, metering and customer service;
- C. To provide an open, supportive and competitive platform to develop and deploy renewable generation, storage, efficiency and beneficial electrification technologies;
- D. To assist the State in rapidly meeting or exceeding the climate action plan goals established in Title 38, chapter 3-A;
- E. To improve the State's Internet connectivity through more affordable access to utility poles and other infrastructure in unserved or underserved areas of the State, as defined in section 9202, subsection 5;
- F. To advance economic, environmental and social justice and to benefit company workers and all communities in the State;
- G. To provide for transparent and accountable governance; and
- H. To support, secure and sustain economic growth and benefits for the State.

2. **Governance; board.** The company is created as a body corporate and politic and is governed by the Pine Tree Power Company Board in accordance with this section.

The board is composed of 13 voting members, 7 of whom are elected members and 6 of whom are designated members chosen by the elected members. All members must be residents of the State.

A. As of the last date for filing a nomination petition under Title 21-A, section 354, each of the 7 elected members must be a legal citizen of the United States for at least 5 years, must be at least 21 years of age, must be a legal Maine resident for at least one year, must be a resident of the area the member represents as provided in this paragraph for at least 3 months and may not hold a state elected office. Each elected member represents 5 of the State's 35 State Senate districts, as set out in Title 21-A, section 1203-B, as follows:

- (1) One member represents State Senate districts 1 to 5;
- (2) One member represents State Senate districts 6 to 10;

(3) One member represents State Senate districts 11 to 15;

(4) One member represents State Senate districts 16 to 20;

(5) One member represents State Senate districts 21 to 25;

(6) One member represents State Senate districts 26 to 30; and

(7) One member represents State Senate districts 31 to 35.

If during an elected member's term the member's place of residence as a result of reapportionment is no longer included in the area the member was elected to represent, the member may continue to serve the remainder of the term.

B. The 6 designated members must be selected by the elected members. The designated members must collectively possess expertise and experience across the following 6 areas:

- (1) Utility law, management, planning, operations, regulation or finance;
- (2) The concerns of utility employees and other workers;
- (3) The concerns of commercial or industrial electricity consumers;
- (4) Electricity generation, storage, efficiency, delivery, cybersecurity, connectivity or related technologies;
- (5) Planning, climate mitigation, adaptation or the environment; and
- (6) Economic, environmental and social justice, including the needs of low-income and moderate-income persons.

C. Candidates for election to the board pursuant to paragraph A are eligible for funding through the Maine Clean Election Act, in amounts and under terms commensurate with those for candidates for the State Senate. The Commission on Governmental Ethics and Election Practices, established pursuant to Title 5, section 12004-G, subsection 33, shall adopt rules to implement this paragraph. Rules must include, at a minimum, the procedures for qualifying and certification and for allocation of distributions from the fund and other provisions necessary to ensure consistency with the provisions of the Maine Clean Election Act. Rules adopted pursuant to this paragraph are major substantive rules as defined in Title 5, chapter 375, subchapter 2-A.

D. Candidates for election to the board pursuant to paragraph A are subject to the requirements of Title 21-A, chapter 13.

E. The nomination of candidates for elected members of the board is governed by Title 21-A, chapter 5, subchapter 2, and the determination of the election is governed by Title 21-A, section 723-A. The Secretary of State may adopt rules governing the election of members of the board and shall consult with the commission in developing the rules. Rules adopted under this paragraph are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A.

3. **Term of office.** An elected member of the board serves for a term of 6 years and a designated member of the board serves for a term of 6 years. An elected member serves from January 1st to December 31st and a designated member serves from March 1st to the end of February. A majority of members shall declare a vacancy on the board upon the resignation, death or incapacitation of an elected member, in the event that a member is absent without leave of the chair for at least half of all board meetings held in a 180-day period or in the event of a member's gross and continual neglect of duty. If there is a vacancy on the board of a designated member, it must be filled within 180 days in the same manner as described in subsection 2, paragraph B, and the person selected to fill a vacancy serves for the unexpired term of the member whose vacancy the person is filling. If there is a vacancy on the board of an elected member, the board shall notify the Secretary of State, who shall establish a deadline of no sooner than 60 days after being notified of the vacancy to accept nomination petitions for a special election. A special election must be held within 180 days of notification of the vacancy and declared in the manner prescribed by Title 21-A, section 366. The person elected to fill a vacancy serves for the unexpired term

of the member whose vacancy the person is filling. Designated members may be reselected and elected members may be reelected.

4. Quorum and chair. Seven members of the board constitute a quorum. The board shall elect from its members a chair and a vice-chair. The vice-chair shall serve as acting chair in the absence of the chair.

5. Voting. Except as otherwise provided in this Title, all decisions of the board must be made by a majority vote of the members present. Whenever possible, the board shall attempt to achieve consensus among members.

6. Bylaws; due diligence. Prior to making a purchase price offer for any utility facility or utility property, the board shall adopt bylaws, retain expert professional staff and consultants, secure initial financing, conduct due diligence as it considers necessary and develop a transition plan and a business plan for the company.

7. Board review. Four years after the first meeting of the board, the board shall review the effectiveness of the company governance structure and shall report to the joint standing committee of the Legislature having jurisdiction over energy and utilities matters the outcome of this review. The report may suggest necessary changes to the governance structure of the company. The committee may report out legislation pertaining to the recommendations in the report.

\$4003. Powers and duties; acquisition of utility facilities and utility property

1. Powers; generally. The company is a consumer-owned transmission and distribution utility and has all the powers and duties of a transmission and distribution utility under this Title, as affected by the provisions of chapter 35, within the service territories of the investor-owned transmission and distribution utilities whose utility facilities it acquires under this chapter.

2. Limits on company; generating property. The company may not own or operate a generating source or purchase electric capacity or energy from a generating source, except as the commission may approve in order to allow the company to maintain or improve system reliability.

3. Private sector, competitive, performance-based operations. The company shall contract by means of a competitive public solicitation the services of at least one qualified nongovernmental entity, referred to in this chapter as "the operator" or "the operations team," to provide cost-effective, private sector operations, maintenance, customer accounts management and customer service and information and to assist as necessary in regulatory affairs, capital planning and administrative services. The company may not contract with an operator that has managed a company found to be unfit within the previous 10 years. The company may contract with separate operators for each of the service territories of the acquired utilities, or to meet discrete operations, maintenance or other requirements. In requesting and evaluating bids pursuant to this section, the board shall consider anticipated costs; professional, operational and managerial experience; familiarity with the systems to be administered; and ability to improve customer service and employee morale. The company may establish additional criteria for its solicitation and shall determine the period and the specific terms of each operations contract. The commission shall review and approve, reject or approve with conditions any contract between the company and an operator before it takes effect. A contract with an operations team must reward proven performance, not the provision of capital, and must provide for the efficient and effective fulfillment of the company's purposes under section 4002.

4. Retention of employees. The operator shall hire any person who was an employee of the acquired utility at the time the company acquired the utility facilities who is a qualified, nonexempt employee subject to collective bargaining agreements of the acquired utility and may hire any other person who was an employee of the acquired utility with the exception of those employees on the executive board of the acquired utility. To ensure continuity and an experienced local workforce, the operations team shall offer to these employees a retention bonus of 8% of annual gross pay for the first year of work and 6% of

annual gross pay for the 2nd year of work. This bonus must be payable on the earlier of the anniversary of the date of hire by the operator and the date of a termination of employment that occurs following the date of hire, as long as the termination is due to the employee's death or disability, by the employer without cause or by the employee for good reason. The operations team shall maximize opportunities for internal promotion, additional staffing and on-the-job training for all employees and may not contract with other businesses to perform work that could reasonably have been performed by qualified, nonexempt employees of the operations team.

5. Rights of employees. The employees of the operations team retained to operate the company's facilities are private employees. Notwithstanding any provision of law to the contrary, the company shall at a minimum accord all qualified, nonexempt employees and their representatives the same rights as would an investor-owned transmission and distribution utility. The operator may not limit or impair the ability and right of its employees to strike or to engage in any work stoppage or slowdown and may not hire replacement employees permanently during an employee strike. The operator shall notify employee representatives of new hires and shall allow representatives of employees reasonable access to work sites during work hours. The operator shall assume all retirement benefit obligations to the employees of and retirees of an acquired utility, unless these obligations have remained with the acquired utility, its corporate parent or a pension plan trust regulated by the federal Employee Retirement Income Security Act of 1974. The operator shall honor and maintain the terms of any collective bargaining agreements in effect at the time the company acquired the investor-owned transmission and distribution utility for the remaining term of any collective bargaining agreement, except that, when 2 or more contracts exist, the employees' wages, salaries and benefits must be made reasonably equal to the higher of those provided in the contracts or must exceed those previously paid by the acquired utility.

Upon the conclusion of a contract pursuant to subsection 3, the company, in soliciting for a new contract, shall give preference to service providers that agree to maintain or improve the terms of the collective bargaining agreement in existence on the conclusion of the prior contract.

6. Acquisition of utility facilities and utility property. Notwithstanding any other provision of this Title, rules adopted under this Title or any other applicable law to the contrary, the company shall purchase or acquire by the exercise of the right of eminent domain all utility facilities in the State owned or operated or held for future use by any investor-owned transmission and distribution utility, in accordance with this subsection, and may also purchase or acquire by the exercise of the right of eminent domain in accordance with this subsection any other investor-owned transmission and distribution utility property should the board determine such an acquisition to be in the interest of its customer-owners. The company shall finance the purchase or acquisition of utility facilities or utility property under this subsection by issuing debt in accordance with chapter 9. The board may not purchase or acquire by the right of eminent domain any utility facilities or utility property under this subsection until 12 months after the effective date of this chapter or 6 months after the first meeting of the board, whichever is later.

A. Within 18 months after the effective date of this chapter or 12 months after the first meeting of the board, whichever is later, unless further delayed to a date certain by a vote of at least 9 members of the board, the company shall:

(1) Identify the utility facilities and any other utility property in the State owned or operated or held for future use by any investor-owned transmission and distribution utility to be purchased by the company;

(2) Determine a purchase price offer to be made for the utility facilities and other utility property. The purchase price offer must include compensation for the cost of preparing and submitting necessary regulatory filings, including but not limited to those required by the federal Department of Energy, Federal Energy Regulatory Commission; and

(3) Deliver notice of the purchase price offer, including detailed description of the utility facilities and other utility property to be purchased, to the investor-owned transmission and distribution utility that owns, operates or holds for future use the subject utility facilities and utility property.

By a vote of at least 9 members of the board, the company may delay by up to one year the purchase of the utility facilities and any other utility property of one of the 2 investor-owned transmission and distribution utilities in the State and proceed with the purchase of the utility facilities and any other utility property of the other investor-owned transmission and distribution utility in the State. A delay approved by the board under this paragraph may be renewed once in the same manner for up to one additional year.

B. After the receipt of a notice of the purchase price offer under paragraph A, subparagraph (3), the investor-owned transmission and distribution utility may, within 30 days of the date of receipt, submit a counteroffer to the company. If the company rejects the counteroffer, within 30 days of the date of receipt of the rejection the investor-owned transmission and distribution utility may petition the Superior Court of Kennebec County to determine and order an alternative purchase price for the subject utility facilities or utility property in accordance with this paragraph. The purchase price determined by the court must include compensation for the cost of preparing and submitting necessary regulatory filings, including but not limited to those required by the federal Department of Energy, Federal Energy Regulatory Commission. After the filing of a petition by an investor-owned transmission and distribution utility under this paragraph, the Superior Court, as expeditiously as possible, shall:

(1) Select, in consultation with the company and the petitioner, a referee or referees with relevant expertise and capabilities to determine a recommended purchase price for the utility facilities and utility property;

(2) Complete a trial or hearing, as appropriate, for the presentation of evidence to referees, who shall submit a recommended purchase price to the court; and

(3) Render a decision and, based upon the recommended purchase price submitted under subparagraph (2) and any other information available to the court, order a purchase price to be paid by the company to the petitioner for possession and ownership of the subject utility facilities and utility property.

The decision of the Superior Court under this paragraph is appealable to the Law Court as in any civil action.

C. The taking of utility facilities and utility property by the company is governed by this paragraph.

(1) Notwithstanding chapter 65 or any other provision of law to the contrary, if a petition is filed under paragraph B and if the company and subject utilities do not reach an agreement, the company shall, after any appeals are resolved, immediately take the subject utility facilities and utility property identified in paragraph A at the final price rendered by the court.

(2) Notwithstanding chapter 65 or any other provision of law to the contrary, if a petition is not filed under paragraph B and if the company and subject utilities do not reach an agreement, the company shall immediately take the subject utility facilities and utility property identified in paragraph A at the purchase price offer.

Within 45 days of the date upon which the purchase price is either mutually agreed upon by the company and the investor-owned transmission and distribution utility or is finally determined through the judicial process set forth under paragraph B, the investor-owned transmission and distribution utility shall prepare and submit any regulatory filings necessary to the transfer of subject utility facilities and utility property, including but not limited to those required by the federal Department of Energy, Federal Energy Regulatory Commission. If the investor-owned transmission and distribution utility does not prepare and submit such filings within 45 days, the company may request that the

commission investigate the utility's failure to prepare and submit the filings. Upon such a request from the company, the commission shall, in a timely manner, investigate the utility's failure to prepare and submit the filings. If the commission finds the investor-owned transmission and distribution utility unreasonably delayed or failed to prepare and submit the filings, or failed to prosecute and pursue federal regulatory approvals of the transfer in good faith, the commission shall direct the utility to do so by a date certain and may order other remedies, including deducting the cost of preparing and submitting such regulatory filings from the purchase price or otherwise preventing the utility from recouping the cost and requiring the utility to pay for costs to other parties caused by the delay.

If at any time during the process prescribed in this subsection the company and either of the investor-owned transmission and distribution utilities reach an agreement on the purchase price of all utility facilities and utility property in the State owned or operated or held for future use by that investor-owned transmission and distribution utility, the sale may be finalized in accordance with that agreement.

The commission shall impose such conditions on the acquisition of all utility facilities and utility property in the State owned or operated or held for future use by any investor-owned transmission and distribution utility as it determines are necessary to protect the public interest during the period between the effective date of this chapter and the date on which ownership and control are fully assumed by the company and the operations team. The commission shall take all necessary actions to ensure that the investor-owned transmission and distribution utilities and their owners cooperate fully, promptly and cost-effectively with the company during the transition in ownership and control. The commission may allow recovery by or reimbursement to the utility of necessary expenses associated with the transition. At a minimum, the utility must be required to plan, construct, operate and maintain facilities and to cooperate with customers, generators and other stakeholders to the same extent that the commission would require of any transmission and distribution utility and to provide the company such information as may be necessary to meet its responsibilities under this Title, including but not limited to a detailed inventory of assets.

7. Existing obligations. All existing agreements, obligations and contracts, including but not limited to long-term contract obligations and net energy billing agreements of an investor-owned transmission and distribution utility, must be transferred to the company and any counterparty to an agreement, obligation or contract shall accept the assignment of the investor-owned transmission and distribution utility to the company.

8. Regional transmission. The service territories of the company initially remain in the transmission system to which they belonged on the effective date of this chapter until changed by majority vote of the board.

9. Names. The company may adopt one or more alternative or regional names to distinguish its service territories or for any other purpose.

10. Rules. The company may adopt rules pursuant to Title 5, chapter 375, subchapter 2-A for establishing and administering the company and carrying out its duties. Rules adopted pursuant to this subsection are major substantive rules as defined in Title 5, chapter 375, subchapter 2-A.

11. Bylaws. The company shall adopt bylaws, through the board, consistent with this section for the governance of its affairs.

12. Consumer-owned transmission and distribution utilities; application. This subsection controls the treatment of consumer-owned transmission and distribution utilities and the application of law to the company.

A. This chapter may not be construed to affect the powers, authorities or responsibilities of any consumer-owned transmission and distribution utility other than the company created under this chapter. The company may not oppose the extension of the service territory of a consumer-owned transmission and distribution utility existing prior to the effective date of this chapter to include the entirety of a municipality in which the consumer-owned transmission and

distribution utility provides electric service as long as the company is reasonably compensated for the assets and appurtenances required.

B. Notwithstanding any other provision of this chapter or any other provision of law to the contrary, the company is subject to section 310; section 3104; section 3132, subsection 2-D; sections 3132-A, 3132-B, 3132-C and 3132-D; section 3144; section 3210-C, subsections 3, 7 and 11; sections 3212 and 3212-B; and section 3214, subsection 2-A.

13. Board staff; initial activities. The board shall hire qualified and professional staff, including but not limited to a director or manager, chief financial officer, support staff and legal counsel. Assistance and counsel may be provided to the board by the Office of the Treasurer of State, the Office of the Attorney General, the Maine Municipal Bond Bank, the Finance Authority of Maine, the commission, the Office of the Public Advocate and any other state entity. All initial activities and expenditures of the board prior to the final acquisition of utility facilities and utility property must be funded by short-term debt of the company, to be retired in the initial financing and acquisition of the investor-owned transmission and distribution utility facilities and utility property. Notwithstanding any provision of the law to the contrary, debt incurred by the board for its initial activities and expenditures is presumed to be prudently incurred on behalf of the customers of the investor-owned transmission and distribution utilities and is recoverable in rates, except where proven to be imprudent beyond a reasonable doubt. To the extent that the company's initial activities are specifically attributable to one but not both acquired utilities, those separately attributable costs must be recovered from ratepayers of the utility to which they are attributable.

§4004. Cost-of-service rates

The rates and all other charges of the company must be sufficient to pay in full the cost of service, including the cost of debt and property taxation.

§4005. No use of state funds or tax dollars

Debt or liability of the company is not a general obligation or moral obligation of the State or any agency or instrumentality of the State other than the company, and neither the State nor any agency or instrumentality of the State other than the company guarantees any debt or liability of the company.

§4006. No debt or liability of the State

The company serves a public purpose in the carrying out of the provisions of this chapter, but debt or liability of the company is not a general obligation or moral obligation of the State.

§4007. Voter approval

Notwithstanding any other provision of law enacted on or before the date upon which this chapter is enacted, if this chapter is approved by voters of the State at a statewide election, debt or liability of the company is not subject to additional voter approval.

§4008. Property and income tax status

1. Property tax. Notwithstanding Title 36, chapter 105, subchapter 4, the company is subject to property taxation pursuant to the laws of the State and must pay property tax in the same manner as an investor-owned transmission and distribution utility. Rates charged by the company must include sufficient amounts to pay property taxes due under this subsection.

2. Income tax. Notwithstanding any provision of law to the contrary, income of the company is exempt from all taxation or assessment by the State or any political subdivision of the State. All bonds, notes and other evidences of indebtedness issued by the company in accordance with chapter 9 are legal obligations of the company, and the company is a quasi-municipal corporation within the meaning and for the purposes of Title 30-A, section 5701. All bonds, notes and other evidences of indebtedness issued by the company are legal investments for savings banks in this State and are exempt from state income tax.

3. Tax increment financing agreements. If an investor-owned transmission and distribution utility acquired by the company is subject to a tax increment financing agreement under Title 30-A, chapter 206, the company acquires the same rights

and responsibilities as applied to the investor-owned transmission and distribution utility under the agreement.

§4009. Termination of the company

The company may not be dissolved or cease operations except by authorization of law and only if all debt and liabilities of the company have been paid or a sufficient amount for the payment of all debt and liabilities has been placed in an irrevocable trust for the benefit of the holders of the debt and only if any remaining equity of the company is returned in an equitable manner to the customers of the company.

§4010. Freedom of access; confidentiality

The proceedings and records of the company are subject to the freedom of access laws, Title 1, chapter 13, except as specifically provided in this section.

1. Confidential records. The following records are designated as confidential for purposes of Title 1, section 402, subsection 3, paragraph A:

A. A record obtained or developed by the company that a person, including the company, to whom the record belongs or pertains has requested be designated confidential and that the company has determined contains information that gives the owner or a user an opportunity to obtain a business or competitive advantage over another person that does not have access to the information, except through the company's records, or access to which by others would result in a business or competitive disadvantage, loss of business or other significant detriment to any person to whom the record belongs or pertains; and

B. A record that contains usage or other nonpublic information regarding a customer of a transmission and distribution utility in the State.

The company shall provide to a legislative committee, on written request signed by the chairs of that committee, any information or records, including information designated confidential under this subsection, specified in the written request. The information or records may be used only for the lawful purposes of the committee and in any action arising out of any investigation conducted by the committee, subject to protective order.

2. Exceptions. Notwithstanding subsection 1, the following are not confidential and are public records:

A. Any otherwise confidential information the confidentiality of which the company determines to have been satisfactorily and effectively waived;

B. Any otherwise confidential information that has already lawfully been made available to the public; and

C. Impersonal, statistical or general information.

3. Disclosure prohibited; further exceptions. A board member, employee, agent, other representative of the company or other person may not knowingly divulge or disclose records designated confidential by this section, except that the company, in its discretion and in conformity with legislative freedom of access criteria in Title 1, chapter 13, subchapter 1-A, may make or authorize any of the following disclosures of information:

A. If necessary in connection with processing any application for, obtaining or maintaining financial assistance for any person;

B. To a financing institution or credit reporting service;

C. Information necessary to comply with any federal or state law, regulation or rule or with any agreement pertaining to financial assistance;

D. If necessary to ensure collection of any obligation in which the company has or may have an interest;

E. In any litigation or proceeding in which the company has appeared, introduction for the record of any information obtained from records designated confidential by this section; and

F. Pursuant to a subpoena, request for production of documents, warrant or other order, as long as the order appears to have first been served on the person to whom the confidential information sought pertains or belongs and as

long as the order appears on its face or otherwise to have been issued or made lawfully.

§4011. Annual report

By April 15th of each year, beginning no more than one year after the first meeting of the board, the company shall submit a report to the joint standing committee of the Legislature having jurisdiction over energy and utilities matters summarizing the activities and performance of the company in meeting its obligations to its customer-owners and its responsibilities under sections 4002 and 4003 during the preceding calendar year and its plans for the current year and subsequent 5 years. Each annual report must describe in detail how the company's decisions, operations and use of low-cost financing have supported and will support the State's progress toward the climate action plan goals established in Title 38, chapter 3-A and how such financing has affected and will affect job creation and gross state product.

§4012. Initial 5-year plan

Within 18 months of the date in which the company and the operations team fully take ownership and control of all utility facilities in the State owned or operated or held for future use by any investor-owned transmission and distribution utility, the company shall submit to the commission for approval a 5-year plan to meet initial affordability, reliability, decarbonization and connectivity goals.

1. Plan minimum requirements. At a minimum, the 5-year plan under this section must also include a program to:

- A. Establish lower rates for low-income residential customers;
- B. Build across the State accessible, rapid charging infrastructure for electric vehicles;
- C. Reduce make-ready and pole attachment costs for open-access fiber-optic cable in unserved and underserved areas of the State as defined in section 9202, subsection 5; and
- D. Make rapid investments in the distribution network to upgrade reliability and to improve capacity for interconnections of new renewable generation and storage facilities.

Sec. 13. Review of laws and report. The Public Utilities Commission shall examine all laws that may be affected by this Act or need to be changed as a result of this Act, including laws

governing the Pine Tree Power Company as established under the Maine Revised Statutes, Title 35-A, section 4002, and laws relating to investor-owned transmission and distribution utilities that may be eliminated as a result of this Act. The commission shall determine any modifications to laws that may be necessary or appropriate as a result of this Act or to effectuate the purposes of this Act and shall submit proposed legislation to the joint standing committee of the Legislature having jurisdiction over energy, utilities and technology matters no later than 6 months after the first meeting of the Pine Tree Power Company Board under Title 35-A, section 4002. The joint standing committee of the Legislature having jurisdiction over energy, utilities and technology matters may report out a bill relating to the subject matter of this Act and to the commission's report.

Sec. 14. Staggered terms of initial members of Pine Tree Power Company Board. Notwithstanding the Maine Revised Statutes, Title 35-A, section 4002, subsection 3, the terms of the initial members of the Pine Tree Power Company Board must be staggered as provided in this section.

1. The initial designated members of the board serve as follows, determined by lot by those members after their selection: 2 members serve 6-year terms, 2 members serve 4-year terms and 2 members serve 2-year terms.
2. The initial elected members of the board serve as follows, determined by lot by those members after their election: 3 members serve 6-year terms, 2 members serve 4-year terms and 2 members serve 2-year terms.

Sec. 15. Code of ethics; recommendations. On or before February 15, 2024, the Office of the Attorney General shall submit to the joint standing committee of the Legislature having jurisdiction over state and local government matters recommendations regarding the establishment of a code of ethics applicable to the members of the Pine Tree Power Company Board, as established in the Maine Revised Statutes, Title 5, section 12004-G, subsection 36. After receiving the recommendations, the joint standing committee may report out a bill related to those recommendations to the Second Regular Session of the 131st Legislature.

Sec. 16. Effective date. That section of this Act that enacts the Maine Revised Statutes, Title 35-A, section 1511-A takes effect January 1, 2025.

Instructions for Circulation		Certification Code for Valid Signatures
Petitioner – must:	Petition Circulator – must:	✓ Individual signing petition is a registered voter
• Be a Maine registered voter	• Complete the Circulator’s verification	The most common reasons for rejection of signatures or petitions (with applicable codes) are as follows:
• Sign name as it appears on the voting list	• Take the oath before a Notary Public prior to submission of petitions to Registrar	
• Sign only once	• NOT collect signatures after taking Oath	Of Individual Signatures DUP Individual previously signed the petition (duplicate name) NR Individual is not a registered voter DATE Individual signed after the date of Circulator’s verification ANO Individual’s signature made by another person SIG Individual did not sign the Petition (printed name only) Note: use only when voter’s printed name cannot be matched to printing on the voter registration application
• NOT sign another’s name		
• Print name; date of signing; street address and municipality of residence (unless printed by Circulator)	Notice regarding Maine residency and registration requirements: A court order issued in <i>We the People v. Bellows</i> , 1:20-cv-00489-JAW, currently prevents the Secretary of State from enforcing state laws requiring circulators to be Maine residents and registered voters. Should the court order be terminated, circulators may be required to be Maine residents and registered voters to continue circulating petitions.	Of Entire Petitions CERT Registrar’s certification is not completed or is not signed ALT Information written on the petition has been altered in a material way OATH Circulator’s verification is not completed or is not signed OATH Circulator did not take the oath before a valid Notary Public OATH Notary did not complete or sign the notarization OWN Notary is an immediate family member of the circulator FORM Petition is not in the form approved by the Secretary of State (e.g. pages missing, damaged or out of order, etc.)
Registrar – must:		
• Date and time stamp petition indicating when it is received		
• Complete the “Registrar Use Only” space using the codes described in the box to the right		
• Complete and sign the certification by indicating which names on the petition appear on that municipality’s voting list		
WARNING: Making a false statement by the circulator, signing a petition with the name of another, or signing a name more than once on these petitions is a Class E crime.		

Printed Name of Circulator

Unique Identifying Number

An Act To Create the Pine Tree Power Company,
a Nonprofit, Customer-owned Utility

Freedom of Citizen Information: Before a registered voter signs any initiative petition, signature gatherers must offer the voter the opportunity to read the proposed initiative summary and fiscal impact statement prepared by the Secretary of State.

Registrar use only	Signature	Date Signed	Actual Street Address (Not P.O. Box)	Municipality (Where Registered)	Name Printed
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Circulator’s Oath

I hereby make oath that I am the Circulator of this petition; that I personally witnessed all of the signatures to this petition; and, to the best of my knowledge and belief, each signature is that of the person whose name it purports to be.

Signature of Circulator _____ Printed Name _____

Signature of Notary _____ Printed Name _____

Subscribed to and sworn before me on this date: _____ (Date must be completed by Notary)

Date my Notary Commission expires: _____

Registrar’s Certification

Municipality_____ Total Valid _____ Total Invalid _____

I hereby certify that the names of all the petitioners listed as valid appear on the voting list as qualified to vote for Governor.

Date & Time Petition Received:

Signature of Registrar: _____

Date petition certified: _____

Petition Log

For Secretary of State Use Only

Petition #: _____ Valid: _____ Invalid: _____

Invalid

Reason

Signature Lines

SOS Staff: _____

Comments: